269 EXHIBIT No. 6.

QUEEN AND CRESCENT

FAST FREIGHT LINE.

THE ASSOCIATE RAILWAYS.

Cincinnati, New Orleans & Texas Pacific Railway Co.
(Lessees Cincinnati Southern Ry.)
Alabama Great Southern Railroad.

New Orleans & North-Eastern Railroad.
Alabama & Vicksburg Railway Co.
Vicksburg, Shreveport & Pacific R. R.

—AND—

EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY CO.

(Lessees Louisville Southern R. R.)

THROUGH FREIGHT TARIFF No. 15.

Naming Through Rates from

CINCINNATI, O., LOUISVILLE, LEXINGTON, AND FRANKFORT, KY.

And other points named to

New Orleans, Vicksburg, Memphis, Jackson, Mobile, Atlanta, Chattanooga, Birmingham, Augusta, Montgomery, Macon, Savannah, Meridian, Jacksonville, and Charleston

And principal points in

Kentucky, Tennessee, Georgia, Alabama, Mississippi, North and South Carolina, Louisiana and Florida.

270 **EFFECTIVE APRIL 16, 1891.**

Superseding Through Freight Tariff No. 14 of May 16th, 1890, and Supplements 1 to 9 inclusive, and all other previous rates, either printed or manuscript, to points named.

GOVERNED BY SOUTHERN RAILWAY AND STEAMSHIP ASSOCIATION CLASSIFICATION.

J. B. CLANCEY, Contracting Agent, Cincinnati, O.
JOHN MENZIES, Con't Agt., Lou. Sou., Louisville, Ky.

D. MILLER, Traffic Manager. R. X. RYAN, General Freight Agent. G. P. BILES, Ass't Gen'l Fr't Agent.

TO ATLANTA, GA.

FROM	Per One Hundred Pounds.												Per Barrel.
	1	2	3	4	5	6	A	B	C	D	E	H	F
Cincinnati, O., Louisville, Ky., and C. S. Stas. North of Lexington	107	92	81	68	56	46	28	36	31	27	48	53	54
Lexington Ky.	107	92	81	68	56	46	28	36	29	25	48	53	50
Frankfort "	107	92	81	68	56	46	28	36	31	27	48	53	54

Governed by So. Ry. & S. S. Ass'n Class'n, except specials named.

TO AUGUSTA, GA., (Proper.)

FROM	Per One Hundred Pounds.												Per Barrel.
	1	2	3	4	5	6	A	B	C	D	E	H	F
Cincinnati, O., Louisville, Ky., C. S. Stas. north of Lexington	107	92	81	68	56	46	28	38	33	29	50	55	58
Lexington Ky.	107	92	81	68	56	46	28	38	31	27	50	55	54
Frankfort "	107	92	81	68	56	46	28	38	33	29	50	55	58

Governed by So. Ry. & S. S. Ass'n Class'n except specials named.

271 *Testimony of Edwin Fitzgerald, of Knoxville, Tenn.*

Q. 1. State your name, age, residence and occupation.

A. Edwin Fitzgerald; age, forty-eight; residence, Knoxville, Tenn.; traffic manager of the E. T., V. & Ga. R. R.

Q. 2. State how long you have been connected with the traffic business in the United States and what official position in that service you have filled during that time.

A. Since 1867, various capacities. Freight agent of roads. For ten years manager of steamship lines between Baltimore and Wilmington, N. C., and Charleston, S. C.; subsequently manager of the Chesapeake and Ohio Railway's fast freight line, and during the past four years traffic manager of the East Tennessee, Virginia & Georgia R. R. system.

Q. 3. State whether or not the phrase "under substantially similar circumstances and conditions" as connected with the railroad transportation of passengers and property in the United States was at and prior to February 4, 1887, a railroad-traffic term?

(Counsel for plaintiff objects to answers thought to be elicited by this question, because the same would be irrelevant.)

A. I do not recall the phrase "under similar circumstances and conditions" as of general use or as one of constant expression, but it has always existed as the theory in rate construction, and the meaning it carries has always been understood in the construction of rates.

Q. 4. Please explain fully how or in what respect, if at all, the existence of competition between carriers affects the circumstances and conditions, under which the transportation of property is conducted.

A. The competition between carriers has a decided effect in establishing circumstances and conditions, and in no section of the United States does dissimilarity exist to such an extent as in the Southern and Southwestern States. The circumstances and conditions governing the construction and rate adjustment in this territory is occasioned by water transportation against which rail lines compete, serving as it does, as the prime factor in fixing the
272 rates. The water lines from the North Atlantic ports make the rates to the South Atlantic and gulf ports. The rates of the steamer lines operating between such ports are controlled, in a large measure, by sailing-vessel competition. This is notably so on the lower classes of freight. The large volume of traffic from the South Atlantic and gulf ports in lumber, naval stores, etc., going east, afford to sailing vessels profitable return cargoes, consequently they carry the south-bound merchandise at very low rates. There are established sailing-vessel packet lines operating from eastern coast cities to the South Atlantic and gulf ports. This competition affects the rates of the regular steamer lines, and thus these conditions fix the water-line rates. To such rates as are made by the water lines can be added the rates in Georgia as fixed by the

Georgia commission, and the total rates thus made from Boston, New York, Philadelphia, Baltimore, etc., are the highest that can be obtained. Again, water competition of the rivers is a factor of controlling force; the boats on the Savannah river fix the rates that can be charged by the rail lines from Savannah to Augusta. The roads from Charleston, S. C., cannot allow Savannah to have a lower rate for substantially the same distance, consequently the Savannah river, though it does not reach Charleston at all, is the factor in establishing rates from Charleston to Augusta. At the rates thus adjusted from eastern cities to Augusta, the longer lines through Wilmington, Norfolk, Portsmouth and West Point must work, and so also must be the basis for the adjustment of the rates from all eastern points either by the rail and water lines or by the all-rail lines.

Q. 5. State what difference there is, if any, where the competition between carriers is by rail and where it is by water, so far as the competition may effect the circumstances and condition- under which the transportation of property is conducted.

A. If a rail carrier is in position to control the rate adjustment to a certain point, then such conditions are practically the same as if the competition was by water and assuredly establishes the circumstances and conditions upon which other lines must compete.

A rail carrier might have such advantages at one point and
273 such little interest at others that it could be made to its interest to so adjust its rates to such a point as to insure the control of the traffic, and an effort of this kind would be of equal controlling force as if the competition was against uncontrollable water lines.

Q. 6. Please explain fully how or in what respect, if at all, the existence of competition between markets or between product and product affects the circumstances and conditions under which the transportation of property is conducted.

A. The competition between markets is of controlling force, as is also the competition as between product and product and naturally affects the circumstances and conditions under which the transportation is conducted. To illustrate: The steamer lines from eastern coast cities to Savannah, in connection with the lines from Savannah to Augusta, as I have endeavored to explain, fixes the total rates from such eastern cities to Augusta. It must be clear, therefore, that to enable Cincinnati to compete in the sale of such similar products as are produced in Cincinnati and at eastern cities, there must be an adjustment of rates from Cincinnati to such points with reference to the rates from eastern points. Otherwise competition would be destroyed as between markets, and the eastern markets would enjoy the control of such business, and the lines from Cincinnati would be deprived of such traffic as they are now able to carry under a proper adjustment of rates.

Q. 7. In making the rates on freight from Cincinnati to Atlanta, please state the names of the carriers who are consulted in making the rates and who have a voice as to what those rates shall be.

A. The rates from Cincinnati to Atlanta are made with reference

to the rates from Baltimore to Atlanta, and the lines engaged in traffic from Cincinnati to Atlanta are practically as follows: The Cincinnati, New Orleans & Texas Pacific railway, the Louisville and Nashville railroad, together with the Nashville, Chattanooga and St. Louis railroad, the Louisville and Nashville railroad through Jellico, with the E. T., V. & G. R. R. These lines connect at
274 Chattanooga with E. T., V. & G. R. R., the W. & A. R. R., and the Central R. R. of Georgia. The Louisville & Nashville R. R. likewise reaches Atlanta through its connections at Birmingham. These lines, together with lines operating from the east, are the roads interested in making the rates to Atlanta.

Q. 8. State whether or not there are any competing lines between Cincinnati and Atlanta, and if there are, give the names of the various railroads and rivers forming parts of such competing lines.

A. The above-named lines and others compete from Cincinnati to Atlanta, and also the several trunk-line roads operating from Cincinnati to Baltimore and other eastern cities, and the Chesapeake and Ohio, in connection with railways and the Atlantic coast steamship lines into the South Atlantic ports are competitors for the traffic.

Q. 9. State what, in your opinion, would be a reasonable rate per hundred pounds on first-class freight from Cincinnati to Atlanta, and state your reasons for any opinion you may express in regard thereto.

A. I consider the rates now in effect from Cincinnati to Atlanta reasonable and just. These rates have been in effect for a long time; the traffic has been moved to the satisfaction of the shipper and consignee, and the business community is satisfied with the rates charged.

Q. 10. Explain how railroad rates in Georgia are made from one local station to another local station, where both of said stations are in that State. What connection, if any, does the State railroad commission of Georgia have with the making of such rates?

A. The tariff of rates for transportation by the roads in Georgia, as far as it applies between stations in the State, is fixed and regulated by the Georgia State railroad commission, and no change from such established rates can be made either to advance or reduce, except by the consent and authority of the commission.

Q. 11. State what in your opinion would be a reasonable local rate per hundred pounds on first-class freight from Atlanta to Social Circle on the Georgia railroad; Social Circle being
275 fifty-two miles east of Atlanta. Give your reasons for any opinion you may express.

A. I consider the rate of 30 cents per hundred pounds on first-class freight from Atlanta to Social Circle a reasonable rate, and my reason for this opinion may be found in the fact that this rate was established or has the sanction of the State railroad commission of Georgia. It can in no manner be considered an unreasonable rate. It is reasonable to the road only because of its ability to enjoy some profit from earnings upon other traffic than that which goes to local stations on its line; and I have no doubt the Georgia com-

mission in establishing this rate of 30 cents per hundred pounds did it with reference to this fact.

Q. 12. State whether or not the rates approved or authorized by the State railroad commission of Georgia are made upon a basis in some instances which recognizes competition as affecting the circumstances and conditions under which transportation is conducted?

A. The Georgia commission in adjusting its tariffs has and does recognize competition as affecting the circumstances and conditions under which transportation is conducted, and such conditions have influenced them in the rate adjustment in the State.

Q. 13. State what competing lines of transportation, if any, are engaged in the traffic between New York, Boston, Philadelphia, Baltimore and Norfolk on the one side, and Wilmington, Charleston, Port Royal, Savannah and Brunswick on the other side. Give the names of the various railroads and of the various steamship companies forming parts of such lines?

A. The following lines of transportation are engaged in the traffic from New York, Boston, Philadelphia, Baltimore and Norfolk to Augusta, Atlanta, etc.: From Boston, direct steamer line to Savannah, controlled by the Ocean Steamship Company; also lines of steamers and rail lines to New York, connecting with direct steamer lines from New York to Norfolk, Richmond, West Point, Charleston, Savannah and Brunswick, and also the Merchants' and
276 Miners' Steamship Company from Boston to Norfolk and West Point, Va., and to Baltimore. At the latter point the Merchants' & Miners' Company connects with its line of steamers to Savannah, making practically a continuous water line by this route from Boston to Savannah. From New York: The Ocean Steamship Company to Savannah, the Clyde steamship line to Charleston, the Clyde steamship line to Jacksonville, the Mallory steamship line to Brunswick, the Mallory steamship line to Fernandina, the Old Dominion Steamship Company to Norfolk, the Old Dominion Steamship Company to Portsmouth, the Old Dominion Steamship Company to West Point and Richmond, the Pennsylvania railroad via Harrisburg and Hagerstown, the Pennsylvania railroad via Alexandria, the New Jersey Central road with the Reading road via Hagerstown, the New Jersey Central with the Baltimore & Ohio via Baltimore. From Philadelphia: The Ocean Steamship Company to Savannah, the Clyde line to Charleston, the Pennsylvania railroad via Norfolk, the Pennsylvania railroad via Alexandria, the Pennsylvania railroad via Hagerstown, the Baltimore & Ohio railroad via Baltimore, and the Baltimore & Ohio railroad via Shenandoah Junction. From Baltimore: The Bay Line of steamers to Norfolk, the Bay Line of steamers to Portsmouth, the York River Line of steamers to West Point, the Merchants' & Miners' Steamship Company to Savannah, the Western Maryland railroad via Hagerstown, the Baltimore & Ohio railroad via Shenandoah Junction, the Baltimore & Potomac railroad via Alexandria. From Norfolk: The Norfolk & Western railroad and connections, the Atlantic Coast lines and connections, the Seaboard Air Line and connections, the Atlantic & Danville railroad and connections. From

Richmond, Va.: The Richmond & Danville railroad, the Atlantic Coast lines and connections, the Chesapeake & Ohio railroad and connections. From Wilmington: The Wilmington, Columbia & Augusta railroad. From Charleston: The South Carolina railroad, the Northeastern railroad, the Charleston & Savannah railroad. From Port Royal: The Royal & Augusta railroad. From Savannah: The Central Railroad of Georgia, the Savannah, Florida & Western railroad and connections. From Brunswick: The
277 East Tennessee, Virginia & Georgia railway, the Brunswick & Western railroad and connections. To the regular lines named as between eastern coast cities and Wilmington, Charleston, Savannah and Brunswick should be considered, the sail vessel packet lines regularly plying between such ports, an element of importance in rate construction to points in this territory.

Q. 14. In making the rates of freight from Baltimore and other eastern cities to Augusta, please state the name of the carriers who are consulted in making the rates and who have a voice as to what those rates shall be?

A. The rates from Baltimore to Augusta are made by all the lines interested in the traffic at Augusta, and are made with reference to the water-line rates from Baltimore to Savannah and the rates from Savannah to Augusta; and the other lines operating from Baltimore as above named must accept the total rate thus made.

Q. 15. State whether or not freights can be and have been carried from Cincinnati to Augusta by routes not passing through Atlanta, and if so give the name of the various railroads and other transportation lines forming parts of such routes?

A. To my own knowledge and experience freights have been carried from Cincinnati to Augusta by routes not passing through Atlanta. Rates have been so adjusted at times by the trunk lines to the seaboard which have allowed combinations in connection with water lines from Baltimore and possibly other eastern seaboard cities by which less rates have been made than the tariff rates then in effect by the lines from Cincinnati to Augusta through Atlanta. Similar competition has existed between Cincinnati and Augusta over the Chesapeake and Ohio railway and its connections.

Cross-examination:

Q. 1. If, as you state, in your opinion, the rates as fixed from Cincinnati to Atlanta are just and reasonable, being on first-class freight on through bills $1.07 per hundred pounds, what would you say of the same rate being charged from Cincinnati to Augusta, the increase in distance being 171 miles?

278 A. In reply to that, the rate to Augusta naturally does not afford to the lines between Cincinnati and Atlanta as much revenue as is derived from the same rate to Atlanta. The question, therefore in the making of the rate between Cincinnati and Augusta cannot be considered upon the same basis. If the elements of competition that fix the rate as between Cincinnati and Augusta did not exist, the lines assuredly would charge a rate more remunera-

tive than they are enabled to charge in the transportation of traffic as between Cincinnati and Augusta. The rate from Cincinnati to Atlanta is reasonable and just, but the lines in the transportation of the traffic as between Cincinnati and Augusta derive a margin of profit in the transportation of this traffic, and are compelled to accept the rates fixed by competitive influences, over which they have no control.

Q. 2. It has been stated, and is contended, that the cost of transportation on short hauls is greater than on long hauls. Now, for the moment, let us accept this and see why it would cost more to ship a number of buggies or any other freight from Cincinnati to Social Circle on through bills than to Atlanta, especially as no more is charged for making the same shipment to Augusta, a difference in distance of 119 miles, as between Social Circle and Augusta?

A. As between the lines operating from Cincinnati to Atlanta, it would make no difference to them in point of compensation or revenue whether the shipment was destined to Atlanta or to Social Circle. But, to the delivering road, or the road upon which the local station is situated, there would be a very material difference in the cost of the service as between the expense to transport the traffic to a local station or over its entire line to Augusta.

Q. 3. Are not all or nearly all the railroads in this country now laid with standard-gauged track or track of uniform width?

A. Substantially, yes.

Q. 4. Are not through cars used on all the railroads from other roads and connecting lines in the transportation of property from one point to another and especially on through bills of ship-
279 ment, and was not this the object had in view by the railroad companies of the country in making the gauge of the tracks of their lines respectively of uniform width?

A. In the handling of traffic it is to the interest of the roads, as far as it can be made practicable to handle the business in through cars, that is to say to load the cars from point of shipment, as far as possible in the direction of the destination of the property—the object accomplished is in the matter of quicker time, economy and greater facility in the interest of the commerce of the country. In regard to the change of gauge unquestionably, these considerations governed. Until it was done additional expense was incurred, delays ensued and other difficulties existed. In the matter of traffic to local stations the handling of the business in through cars is not practicable except in instances.

Q. 5. You have stated that you regard the local rate of 30 cents per one hundred pounds from Atlanta to Social Circle as reasonable. This refers to local rates fixed by the Georgia railroad commission from points in Georgia to other points in Georgia, and not to rates fixed on through bills of interstate shipment, does it not?

A. I consider the rate of 30 cents per one hundred pounds from Atlanta to Social Circle a just rate, and I have no doubt that the Georgia commission in the adjustment of its tariffs endeavored to arrive at a figure that would compensate the roads for the service

rendered, and likewise be fair to the interest of the shippers and receivers of the property. As far as it applies in the matter of interstate business, it makes no difference at all to the Georgia railroad whether the business destined to Social Circle originates at Cincinnati or Atlanta. The revenue that they must derive from such traffic going to its local stations is governed by the expense of performing the service, and the proper proportion of profit that that company is entitled to enjoy from the transportation of freight to stations on its line.

EDWIN FITZGERALD.

280 *Testimony of E. B. Stahlman, of Nashville, Tenn.*

Q. 1. State your name, age, residence and occupation.

A. E. B. Stahlman; 47 years of age; Nashville, Tenn.; occupation, commissioner of the Southern Railway & Steamship Association; which association has its headquarters in Atlanta, Ga.

Q. 2. How long have you been connected with the railroad-traffic business in the territory south of the Potomac and Ohio rivers, and east of the Mississippi river, and state the various capacities in which you have been connected with said business during that period?

A. My service extends back to 1864. For a brief period between 1864 and 1871, I was with the Southern Express Company. In 1871 I accepted the position of freight contracting agent of the Louisville & Nashville railroad, at Nashville. I was subsequently made general agent, and in 1878 general freight agent of that company; in 1879 traffic manager. I then retired from the service of the company; remained out of the service for about three years, during which period I was traffic manager and vice-president of the Louisville, Albany & Chicago railroad. I then returned to my home at Nashville, and in 1886 was elected third vice-president of the Louisville & Nashville Railroad Co., which position I held up to the 1st of November, 1890. I remained out of railroad service for about a year, and on 14th of January last was elected commissioner of the Southern Railway & Steamship Association.

Q. 3. State what causes lead to the formation of the Southern Railway & Steamship Association.

A. Prior to 1873, there was no such organization that I am aware of. During that year the railroads of this part of the southern country entered into an agreement (I mean the railroads of Georgia, Alabama, Tennessee and South Carolina) for the purpose of preventing the ruinous competition between themselves and other lines that were working through the South Atlantic ports to competing points. The competing points at that time were practically those
281 which are considered competing points now, to wit: Augusta, Macon, Atlanta, Rome, Chattanooga, Selma, Montgomery, and perhaps some others. The steamship companies were not parties to this agreement. The effect of that agreement was the establishment of rates to and from these different points so as to prevent rates to or from one point, which would give such point an advantage

over another similarly situated, and also to insure, as far as could be done, the maintainance of rates thus agreed to. In 1875 or 1876, the Southern Railway and Steamship Association was formed, with Mr. Albert Fink as commissioner, which association embraced several of the steamship lines, the purpose being the same as already indicated. In 1879, several of the western roads, including the Louisville & Nashville, Nashville & Chattanooga and Memphis & Charleston also became connected with the association. At various times from 1879 to 1891, other lines became members, and some which were members withdrew and in time reunited. There has been no time since the first effort to organize the association was made, up to the 14th of January of this year, when there were as many railroads and steamship companies members of the association as now, although there are several lines which are embraced within the territory of the association which are not now members of the association, notably the South Carolina railroad, the Charleston & Savannah, the New Orleans & Northeastern, the line between Vicksburg and Meridian, Tennessee Midland, Florida Central & Peninsular railway and several other Florida roads, which I cannot now remember. Neither are the Alabama Midland, Brunswick & Western, Savannah, Americus & Montgomery, Columbus Southern, Atlanta & Florida, or the Georgia, Carolina & Northern, members of the association. Neither are the Clyde steamship lines, plying between New York, Philadelphia and Charleston, and Jacksonville, or the Mallory steamship line, members of the association. Several of the South and North Carolina railroads are not members of the association.

(Petitioner's counsel object to all, or so much of this answer, as refers to the objects and members of the association of 1875, and of the present Southern Railway & Steamship Association, it being admitted that the purposes and objects of said association
282 are in writing, and that this writing is the highest and best evidence of these facts.)

Q. 4. In your last answer you speak of one of the purposes of said association being the preventing of "ruinous" competition. Explain the distinction which you make between runious competition and beneficial competition.

A. By ruinous competition, I mean the condition of affairs which would fix unstable rates of transportation, by the different competing lines to the different competing points; competition which would result in the fixing of rates, in themselves unremunerative to the transportation companies, and which would give the shipper over one line one rate and the shipper over another line a lesser or higher rate, or the shipper of today one rate, and the shipper of tomorrow over the same line another rate, and which would also give the shipper located at one point a rate different from what would be accorded to the shipper located at another point, contiguous thereto, and competing with the other for trade in the same section of country.

Q. 5. In answer to question 3, you speak of certain points as

being competing points when the Southern Railway & Steamship Association was first organized in 1873, and you mention some of those points in your answer. Please explain how those points came to be competing points, and why all points where railroads cross each other have not also become competing points?

A. A number of the points named were distributing centers before railway transportation cut any figure in the commerce of this country. The city of Augusta, with the Savannah river, was able, before any railroads were built into Augusta, to build up a large trade and interchange of commerce with the East and West, by means of water transportation from New York, Philadelphia, Baltimore and Boston by steamship and sailing vessels, to the port of Savannah, thence by steamboat up the river. With Cincinnati, St. Louis and other cities of the West by means of the transportion down the Ohio and Mississippi rivers to New Orleans, thence by schooner, to Savannah, thence up the Savannah river. This
283 position gave to Augusta an opportunity of building up a large trade with all of the country contiguous to Augusta, extending some distance into the interior of Georgia. This commerce and trade from Augusta was conducted by wagons, and in some cases on horseback. The building of the South Carolina R. R. into Augusta opened up a section of country between Charleston and Augusta, for which the cities, *i. e.*, Charleston and Augusta competed. The South Carolina R. R. naturally desired to participate in the traffic between Augusta and the East and Augusta and the West, and therefore fixed such rates of transportation from Charleston to Augusta, in connection with the steamers and vessels from New Orleans and the East, as would enable that road to share in the business in competition with the Savannah River steamers. The South Carolina railroad was completed in 1833. The Georgia R. R. extending from Atlanta to Augusta, was completed in 1845. The completion of this road opened up an additional section of country, tributary to Augusta. In 1869 the Charlotte, Columbia & Augusta road, extending from Charlotte to Augusta, was completed. In 1872 the Georgia R. R. built a line from Augusta to Macon. In 1873 the Port Royal & Augusta R. R. was completed extending from Port Royal to Augusta. In 1882, what is known as the Augusta & Knoxville R. R., extending from Spartanburg, S. C., to Augusta, was completed. The construction of these lines added very much to the importance of the city of Augusta. The Port Royal & Augusta, South Carolina, and the Charlotte, Columbia & Augusta, in connection with the Richmond & Danville system, entering into active competition with the Savannah river, for a share of the traffic going into Augusta and being shipped from Augusta. While the competition at Augusta, between the Savannah river, Port Royal and Augusta, and South Carolina R. R. was active as to business to and from the East, these lines working in connection with the trunk lines from the West through Baltimore and New York and the Chesepeake & Ohio through Richmond, became, as early as 1877–1878 quite active competitors with the direct lines from the West for business from the West. So that the rates of

transportation from the West over the direct lines to Augusta
284 was controlled largely by the rates from the West, via the trunk lines, through Baltimore, New York, and Richmond. And on articles of manufacture and products common to both eastern and western markets, such as soap, candles, machinery, canned goods, starch, vehicles of all kinds, the rates from the East by steamer or sailing vessels to Charleston, Port Royal and Savannah, thence by rail or river to Augusta controlled the making of the rates on similar articles from the West.

Q. 6. How did Macon happen to be considered a competing point?

A. Macon and Augusta were about the same distance from the southern coast. The city of Macon was also a commercial center before any railroads were built to Macon, being at the head of navigation on the Ocmulgee river. According to the best information obtainable, it is known that Macon, before she had a railroad, handled as much as 80,000 to 100,000 bales of cotton per annum, which was a large business at that early date. The cities of Augusta and Macon were rivals for the business of the territory located between Macon and Augusta, both for cotton and merchandise and manufactured articles of all descriptions. The completion of the Central R. R. of Georgia from Savannah to Macon in 1843, gave the city of Macon an outlet by rail to the seaboard, equal in respect to facilities and rates of transportation as those afforded to the city of Augusta by the construction of the South Carolina R. R. The construction of the Central R. R. of Georgia from Macon to Atlanta in 1846, and the construction of the Southwestern R. R., now a part of the Central system from Macon to Columbus, Ga., added very much to the importance of Macon as a distributing centre. The completion of the line from Augusta to Macon in 1872 and the construction of the Macon & Brunswick R. R. some years later, continued to improve the condition of Macon as a commercial centre. The construction by the East Tennessee, Virginia & Georgia R. R. of a line from Rome, Ga., through Atlanta to Macon in 1882, which in the sale of the Macon & Brunswick R. R. by the State to the East Tennessee system, was required to
be done, still further added to the importance of the city of
285 Macon. The Georgia Southern & Florida R. R. which has recently been completed into Florida gives to the city of Macon an outlet to that large territory, which should and doubtless will enable that city to reap material benefits therefrom. The fact that Macon is not much further from the coast than the city of Augusta, and the further fact that both cities had river competition and were competing for trade in the same section before any railroads were built to either point, and the fact that both points have about the same number of railroads centering in them, has satisfied the managers of railroads that the circumstances and conditions which surround the two cities are similar and that it is impracticable, and would be unjust to fix materially different rates of transportation to and from one point, than those fixed to and from the other.

Q. 7. How did Rome happen to be considered a competing point?

A. The city of Rome is located at the confluence of the Oostanaula and the Etowah rivers, these two forming the Coosa river. Rome was also a distributing point and large cotton-shipping point long before any railroads were built—the merchandise into Rome, and cotton out, being handled by steamers between Rome and Wetumpka. There being shoals or falls near Wetumpka, the merchandise and cotton was carted around the falls, connecting the steamers of the Coosa and Alabama rivers. Upon the completion of the Western & Atlantic railroad by the State of Georgia, the people of Rome, or at least some of them, united in the construction of a railroad between the town of Kingston, on the Western & Atlantic R. R., and the city of Rome, a distance of twenty miles. This road was opened for traffic in December, 1848, and in that way gave to Rome a connection, through the Western & Atlantic R. R. via Atlanta, with the ports of Charleston and Savannah, and with the lines via Chattanooga to Nashville and the West, and via Knoxville to the Virginia ports. The Selma, Rome & Dalton R. R., extending from Rome to Selma, was completed in 1870, giving Rome a connection through Selma, Meridian and Vicksburg with
286 the Mississippi river and the West. The railroads, in view of these facilities and the close proximity of Rome to Atlanta, Chattanooga, Selma and Montgomery, have felt, and now feel, that the rates to Rome should be practically the same as the rates to Atlanta, Selma and Montgomery—not, however, quite as low as to Selma and Montgomery, because of the direct and active competition which the two last-named cities enjoy in connection with the steamers plying on the Alabama river.

Q. 8. Explain how Chattanooga came to be considered a competing point.

A. The city of Chattanooga originally known as Ross' Landing, on the Tennessee river, was a place of importance to the section immediately tributary to it, only to the extent that it was made the shipping and receiving point on the Tennessee river for that section. The Tennessee river at that day and time was navigable the year round from its mouth to the Mussel shoals, and for the best part of the year, nine to ten months, from a point above the shoals to Chattanooga, and even to Knoxville. The shoals are located near Florence, Ala. By means of a short horse railroad around the shoals, communication was kept up between the upper Tennessee River packets, running between Knoxville, to Chattanooga and Florence, and the lower Tennessee River packets, running between Florence, Smithland, Paducah, Cairo, Evansville, Cincinnati, Louisville, Memphis, Vicksburg, New Orleans, St. Louis, and other points on the Ohio and Mississippi rivers. What gave Chattanooga an impetus beyond what it acquired as a mere river landing, was the construction of the Western & Atlantic railroad, by the State of Georgia, from Atlanta to Chattanooga. The construction of this road, in connection with the lines extending from Atlanta through Augusta to Charleston, and from Atlanta, through Macon, to Savannah, made Chattanooga a point of interchange, or rather a forwarding station of traffic between the West

and the South. The completion of the Nashville, Chattanooga & St. Louis railroad in 1854, extending from Chattanooga to Nashville, gave to Chattanooga two lines to the West; one via the Tennessee river, and the other through Nashville, thence via the Cumberland river. And subsequently by the construction of the Louisville
287 & Nashville railroad, extending from Nashville to Louisville, the Nashville & Northwestern railroad, extending from Nashville to Hickman, and in connection with the Mobile & Ohio railroad to Columbus and Cairo, Ky., and the construction of the Evansville, Henderson & Nashville railroad, from Nashville to Henderson, Ky., and Evansville, Ind., all rail connections and outlets to all of the important western centers; those located on the Ohio and Mississippi rivers, as well as those beyond. The completion of the Memphis & Charleston railroad, extending to Memphis, on the Mississippi river, in 1858, and the completion of the Alabama Great Southern railroad in 1871, extending from Chattanooga to Meridian, Miss., thence to Vicksburg, all served to increase the importance of Chattanooga as a distributing and reshipping centre. This is independent of the completion of the Cincinnati Southern railroad, which road was finished in February, 1880. The line from Chattanooga to Bristol, *i. e.*, the East Tennessee, Virginia & Georgia, thence to the ports of Norfolk, West Point, Va., also added very materially to the importance of Chattanooga. The opening of the Mussel shoals on the Tennessee river has enforced and emphasized new conditions as to traffic to and from Chattanooga, which the rail lines cannot hereafter ignore, and which must be considered as a factor in the establishment of rates to and from Chattanooga.

Q. 9. How did Selma happen to be considered a competing point?

A. The city of Selma is located on the Alabama river, with a line of steamers plying between Selma and Mobile, which steamers compete actively with the railroads for the transportation of all classes of western produce; they are also in a position to fix the rates, which rail lines must meet, on business from the East through the port of Mobile. The western produce, and articles of western manufacture, from the cities of Cincinnati, Louisville, Evansville, Cairo, St. Louis, Memphis and other Ohio and Mississippi River points, as well as from Chicago, Peoria, Terre Haute, Indianapolis, etc., can, after reaching the river, be carried to New Orleans,
288 down the river, at very low rates of transportation, and from New Orleans, either by a short-rail haul, or by water along the Gulf coast, can be carried to Mobile and there put on board of the Alabama River steamers bound for Selma, at very low rates. Especially is this true of the conditions which have prevailed at various times during the past ten years when the merchants of Montgomery and Selma united in the establishment and operation of a line of steamers between Mobile, Selma and Montgomery. Selma, from the nature of its location on the Alabama river, was relatively as much of a commercial and distributing centre twenty-five years ago as it is today, and the rates of transportation which

prevailed to and from Selma are based entirely, I may say, upon the rates that are made by the water lines. Selma has a line of railroads extending to Vicksburg, on the Mississippi river; has three lines—one via Montgomery, another via Meridian, and one direct, extending to Mobile. Has also three lines, one through Montgomery and Mobile, another through Meridian, and another through Mobile, extending to New Orleans. Has also through Meridian or rather Lauderdale and Jackson, Miss., two lines, extending to Memphis, Cairo, Columbus, St. Louis, Chicago and the West. And through Akron, on the Cincinnati Southern, Calera on the Selma, Rome & Dalton, and Rome and Chattanooga three lines, which compete actively for the business from Louisville, Cincinnati, Evansville, Chicago, Indianapolis and that section. Selma has also a line through Chattanooga, another through Atlanta, three through Montgomery, and the lines already mentioned to Mobile and New Orleans, which compete for business to and from the East, but the regulator of all these rates of transportation may well be said to be the Alabama river, between Mobile and Selma.

Q. 10. How did Montgomery happen to be considered a competing point?

A. What I have said with respect to Selma will apply with equal, if not greater, force to Montgomery, Ala. The number of railroads centering at Montgomery being greater than those which cen-
289 ter at Selma, and the distance from Montgomery to the gulf and any of the South Atlantic ports being shorter than to Selma, except as to Mobile and New Orleans. Montgomery, in addition to a direct line to the port of Pensacola, Fla., and available routes to the ports of Charleston, Port Royal and Savannah, has a short line to the port of Brunswick, which, in connection with the Mallory steamship line, has proven to be a very important factor in the rates of transportation between Montgomery and the East.

Q. 11. Was Columbus, Ga., treated as a competing point by the Southern Railway and Steamship Association?

A. It was, on business from the East, because of the low rates which were made in connection with the line of packets on the Chattahooche- river at intervals, during the past 20 years. (It has not always been so on business from the West, although it is so now) due to the fact that Montgomery, to which point rates are controlled by the Alabama river, is competing with Columbus for the trade in the same territory; and also to the fact that Columbus, in order to share in the trade on the Chattahoochee river, could not afford to have any higher rates prevailing than those which prevailed at other points on the river which were competing with Columbus for the river trade.

Q. 12. All of the competing points to which you have so far referred, seem to be located upon navigable rivers. How did Atlanta, which is not located upon a navigable river, happen to be considered as a competing point?

A. The people of Georgia, through the legislature, as early as 1835, inaugurated a system of internal improvements, which resulted in the construction of a number of railroads, centering at

Atlanta. What is now known as the city of Atlanta was then known as Cross Plains. The construction of the Western & Atlantic road was commenced in 1836, completed to Dalton in 1846, and finished at Chattanooga in 1850. This railroad was constructed with money appropriated by the legislature of Georgia. It is still the property of the State, being operated at present by the Nashville, Chattanooga & St. Louis Railway Company, under a lease from the State. The construction of this road, beginning at Atlanta,
290 going westward, naturally attracted a great deal of attention and capital to Atlanta, resulting in the building up of a town or city at the Georgia terminus of the Western & Atlantic R. R., which gave to this terminus a large territory from which it could secure and build up a business in Atlanta. The terminus of a railroad at any point, with the construction of shops and other buildings, such as depots, warehouses, etc., necessary to conduct the business of such road, would in itself create an interest and serve to promote the building of a town or city. This, coupled with the fact, that the State had used its influence and means to build this road and make Atlanta the terminus, gave to those who saw fit to engage in business enterprises at that place, an approval of their efforts upon the part of the State. The whole sentiment of Georgia, as evidenced by the act of the legislature, and the people, throughout the State, was in the direction of making Atlanta (the terminus of the Western & Atlantic R. R.) the gateway between the South and the West, and indeed, between the South and the East, through which the bulk of the commerce of the State should pass. While the Western & Atlantic road was being constructed, the Georgia railroad built its line from Augusta to Atlanta, which line was completed in 1845. The Central railroad having completed its line from Savannah to Macon in 1843, the Macon & Western R. R. built a line from Macon to Atlanta, which was finished in 1846. These railroads were all constructed by the people of Georgia, evidently under the influences of a movement inaugurated by a convention held at Milledgeville, in 1835, looking to the encouragement of these enterprises and the building of the line from Atlanta to Chattanooga. These important railway enterprises, inaugurated under the inspiration of the day, gave to the city of Atlanta an impetus which was obliged to put her to the front and give encouragement to the people of Atlanta, who were endeavoring to promote that end. In 1857 the Atlanta & West Point R. R. Company built a line extending from Atlanta to West Point, Ga.; as early as 1854, the line from Montgomery, Ala., to West Point, Ga., was completed, thus giving to Atlanta another connection with the seaboard via Montgomery and the Alabama
291 river through the port of Mobile. In 1873 the road from Charlotte to Atlanta, known as the Charlotte air line, was finished, connecting at Charlotte with the Richmond & Danville system, leading to the Virginia ports. In 1881 the Georgia Pacific Railway Company constructed a line from Atlanta to Birmingham, Ala., which road has since that period been extended to the Mississippi river at Huntington. In 1882 and 1883 the East Tennessee,

Virginia & Georgia, as purchaser of the Macon & Brunswick R. R. from the State of Georgia, extended its line from Rome through Atlanta to Macon, Ga., connecting with the Macon & Brunswick, which had been bought from the State, and which purchase from the State carried with it the obligation that the purchaser of the Macon & Brunswick should build a line of road from Rome or some other point on its line through Atlanta to Macon. The people of Atlanta have recently subscribed a large sum of money in the construction of what is known as the Atlanta & Florida R. R., extending from Atlanta, southward. The Georgia, Carolina & Northern extending from Atlanta, through Athens, Ga., to a connection in North Carolina with the Seaboard & Roanoke system, is just nearing completion, and will be put in operation within the next thirty or sixty days. The people of Atlanta invested and lost about $300,000 in the purchase of right of way and construction of the road-bed of the Georgia Western R. R., now the Georgia Pacific. They have invested, and almost lost, a sum aggregating a like amount in the construction of the Atlanta & Florida R. R. They have, by their push, enterprise and liberality, built up many industries in this city.

Q. 13. State whether Birmingham, Ala., was considered by the Southern Railway & Steamship Association as a competing point. State whether it is located upon any navigable river, and state why it was recognized as a competing point, if such be the case.

A. Birmingham is treated by the association as a competing point. It is not on a navigable stream. The conditions surrounding Birmingham are peculiar. It is a railroad center. The first road built was the Alabama Great Southern, extending from
292 Chattanooga to Meridian; opened for business in 1871. The second, the South & North Alabama, now part of the Louisville & Nashville system, completed in 1872, extending to Decatur in the north, Montgomery in the south, reaching the gulf ports of Mobile, Pensacola, and New Orleans, and the western commercial centers of Nashville, Louisville, Cincinnati, Evansville, etc. Third, the Georgia Pacific, extending to Atlanta, Ga., in the east and Huntington, Miss., in the west. Fourth, the Kansas City, Memphis & Birmingham, extending to Memphis, Tenn. Fifth, Birmingham & Sheffield, extending from the junction of the Kansas City, Memphis & Birmingham, to Sheffield, Ala. Sixth, the Central Railroad of Georgia, connecting with its main system at Goodwater. The Alabama Great Southern, the first line built, extending to Meridian, Miss., controls the short line to Vicksburg, and another to New Orleans, and also connects at Chattanooga with the Nashville, Chattanooga & St. Louis road and the Cincinnati Southern, for western traffic, and the East Tennessee & Virginia system, for traffic from the East. The Georgia Pacific, through Atlanta, and the Central Railroad system through Goodwater and Columbus, reach South Atlantic ports, to wit: Brunswick, Savannah, Charleston, and also the Virginia points, through which ports there is an active competition for the business to and from the East. The Louisville & Nashville, from Montgomery, south, actively competes

with the other roads mentioned for traffic between Birmingham, Pensacola, Mobile, New Orleans, and also through the ports of Brunswick, and Savannah.

The Birmingham & Sheffield railroad, extending from Sheffield and Florence, on the Tennessee river, to Birmingham, being entirely within the limits of the State of Alabama, and having water connections all the year round from Florence and Sheffield with the West, and a short rail haul from Florence and Sheffield to Birmingham, is in position to enforce a system of competitive rates at Birmingham in the event the railroads centering at that point should decline to give Birmingham such rates. As a matter of fact the Tennessee river boats in connection with the Birmingham &
293 Sheffield railroad have seriously disturbed and cut the existing rates to Birmingham. But the peculiarities which surround Birmingham, which, in addition to the competition between the various lines referred to, have compelled the adjustment of rates on a competitive basis at Birmingham, are these, to wit: The Birmingham district, I mean by that the city of Birmingham and immediate surroundings, is an iron and coal producing section, which in the manufacture and sale of its product comes in direct competition with product of like kind, *i. e.*, furnaces, coal mines, and manufacturing industries, located in Pennsylvania, West Virginia, and Ohio, on or in close proximity to navigable streams, and as the sale of the product of pig-iron and other articles of manufacture is largely in the West, where the furnaces and manufacturers referred to are located, it has been found necessary in order to enable the furnaces and manufacturers of Birmingham to sell their product, to give them the benefit of competitive rates on such property, and in order to enable them to reduce the cost of manufacture to a point that would compare favorably with the cost of producing these articles in the West, to give to Birmingham, both from the East and West, the benefit of competitive rates on merchandise, food products, and all other classes of freight consumed by the laboring community at work in the manufacture of iron and the production of coal in the district in question.

(Petitioners' counsel object to the answers to questions from No. 5 to 13, inclusive, upon the following grounds: First, because the answers are matters of argument rather than statements of fact; second, because the answers are clearly a summary of information derived from sources other than personal knowledge and are not statements of facts derived from his personal knowledge; third, because what purports to be testimony in these answers does not illustrate the issues in this case; fourth, because the pleadings do not authorize the answers.)

Q. 14. State what are the objects and purposes for which the Southern Railway & Steamship Association was organized, and if those objects and purposes are set forth in any written instrument, please file a true copy of said instrument, as Exhibit No. 1 to your deposition.

294 A. The objects and purposes of the association are set forth in the agreement adopted January 14, 1892, a copy of which is herewith filed. It is in all essential respects the same as the agreement which existed prior to that date, as far back as 1878, to my best *of* recollection.

Q. 15. Are the railroad companies and steamship companies whose names appear to be signed to said agreement, the only railroad companies and steamship companies which are now members of said association?

A. There are no other members, except those whose names appear on the printed copy.

Q. 16. Are all the companies whose names appear as signed to said agreement still members of it?

A. They are still all members, although two of the companies have expressed a desire to retire from the association, or rather, an unwillingness to comply with the terms of the agreement.

Q. 17. It seems that said agreement by article 25, took effect January 14th, 1892, and is to terminate on July 31st, 1892. Have the agreements which have heretofore controlled the association been of longer or shorter durations than that period?

A. I cannot say as to the organization prior to 1878 and 1879. Since that time the agreements have been made to expire with the end of the year, and renewed from time to time each year upon expiration: in some cases some roads declining to continue, or rather declining to renew the agreement; in other cases, other roads or steamship lines asking to become members.

Q. 18. In your answer to question 3, you state that one of the effects of the agreement under which said association operates was to agree upon rates to and from certain designated competitive points so as to prevent rates from one point, which would give such point an advantage over another similarly situated. Please explain how the members of said association practically reach an agreement upon rates; in other words, explain the *modus operandi* of obtaining such agreement.

A. Rates to what we call southeastern territory, to wit: Georgia and a portion of South Carolina and Florida, are based almost exclusively upon what conditions and competition are to be met
295 through the ports of Savannah, Port Royal, Charleston and Brunswick. One of the points, the most susceptible, if I may use the expression, to this competition is Augusta, Ga. In making rates, therefore, we consider very largely the conditions and circumstances affecting the rates of transportation to Augusta, Ga. The rate committee of the association representing the different lines, members of the association, endeavor, as far as they can, to keep up with the movements of traffic and the competition which is offered, from time to time, designed to affect the rates. At the meetings of the rate committee an interchange of views is had as to these conditions, and it is then determined what rates of transportation are necessary to be made via the lines, members of the association to meet the competition which exists, and the rates are then fixed, based upon what the committee in its judgment believes to be the condi-

tions calling for such an adjustment of rates. The rates to and from Macon have been affected very often in like manner, even at times when the rates to Augusta were not affected, due to the fact that the vessels, sail as well as steam, plying to and from the ports of Savannah or Brunswick, made such rates to those ports that, added to the current rates authorized by the Georgia railroad commission, would make a less rate than the rates which had been authorized and agreed to by the rate committee of the Southern Railway and Steamship Association. It requires, under the agreement, the unanimous vote of the rate committee, which now consists of twenty-five members, representing the different steamship and rail lines, to change a rate, either to reduce or advance a rate, except that in case of a failure to secure a unanimous vote, the commissioner may, if he deems the matter one of importance, decide what the rate shall be, that is, whether they shall be reduced, advanced, or remain as they were. The conditions at Macon and Augusta being somewhat alike, has for many years caused the rate committee and the managers of the different railroads to adjust the rates to and from those points on about the same basis, not fixing however the same rates, the rates being made somewhat higher to Macon than Augusta
296 from the East and from the West. But by this I do not mean to say that the rates from the East to Augusta and Macon have been made the same as the rates from the West to Augusta and Macon. On the contrary, rates from the West have been fixed at one price while the rates from the East have been fixed at another. In fixing rates to and from Montgomery and Selma the committee has taken into consideration the rates by water and by rail and water from the East and West to Mobile, plus the rates of the Alabama steamers from Mobile to Selma and Montgomery. The rates to Rome, Ga., have been based largely on the rates to Chattanooga, and the conditions which regulated the rates to and from Montgomery, Selma, Birmingham and Atlanta; Montgomery and Selma, being the competitors with Rome for trade in a large territory. The rates to and from Atlanta have, in addition to the competition between rail lines centering in Atlanta, been largely influenced by the rates to Augusta and Macon. The lines from the West entering Atlanta, did not, and do not now, feel that it would be just to them, or the city of Atlanta, to demand higher rates to Atlanta than those which prevail at Macon and Augusta. Neither do the lines which serve at Atlanta believe it would be fair and just to exact much higher rates on the business of Atlanta than is being charged and collected by other roads serving the cities of Montgomery and Selma. The city of Atlanta, to preserve her trade in competition with the other cities, must have practically the same rates of transportation, and the railroads from the West which terminate at Atlanta have not believed it right to ignore the claims of Atlanta, or to carry freight for a longer distance to markets competing with Atlanta, at a less rate than they were carrying the same class of freight to Atlanta. The lines from the East have fixed their rates through the association, to Macon, Augusta, Selma and Montgomery, upon the basis of the competition they had to meet, over

which they have little or no control. They have not made as low rates from the East to Atlanta, as are made to Augusta from the East, but they have made such rates as would fairly correspond with the rates to Augusta. The adjustment of rates to and from these different points as far as we are enabled to determine, resulted
297 in giving each of the cities referred to an opportunity of competing for the trade which was tributary to these cities.

(Petitioners' counsel object to the answer 18 because it is not responsive to the question, at least he objects to so much thereof as is not responsive.)

Q. 19. In your last answer, you speak of certain vessels, sail as well as steam, plying to and from the ports of Savannah, and of their making such rates to those ports as added to the current rates authorized by the Georgia railroad commission, would make a less rate than the rates which had been authorized and agreed to by the rate committee of the Southern Railway & Steamship Association. From what ports do those vessels come, which ply to and from Savannah? From what territory do those vessels bring traffic to Savannah, and to what points in the interior of Georgia do the rates made by those vessels added to the current rates authorized by the Georgia railroad commission affect the rates authorized and agreed to by the rate committee of the Southern Railway & Steamship Association?

A. These vessels, steam and sail, ply between the ports of Boston, Providence, New York, Philadelphia, and Baltimore, and the ports of Charleston, Port Royal, Savannah, Brunswick, and Jacksonville. There are also vessels plying between the ports of Mobile, New Orleans, and New York, Philadelphia, Baltimore and Boston. They bring traffic from the eastern ports, from the interior New England States, from the West, as far west as Buffalo, Pittsburg, Parkersburg, and Salamanca, and to purely southern coast points; they carry through the ports of Baltimore, Philadelphia and New York business from all points in the West, including Chicago, St. Louis, St. Paul, Minneapolis, Cincinnati, etc. Under the association agreement the regular steamship lines, members of the association, do not guarantee through rates from the West into the interior; but the rates from the West, through the eastern ports of Baltimore, Philadelphia and New York, thence by sail or steam, on vessels not members of the association, to Charleston, Savannah and Brunswick, are so low at times, that although consigned only to such southern ports, there is a sufficient margin between the rates
298 to such ports, plus the Georgia commission rate to the interior, as will justify reshipping into the interior, which combined rate, in that way, is less than the through rate by the direct rail line. We have no means whereby we can well ascertain the extent of this cut of rates by these outside lines in this way, or whether there are through bills of lading given in the West, in all cases, via said lines. About all we can know is that the business does move in that way; and when it is moving, we can generally determine the extent of the movement; and if it be sufficient to

justify a change of rates, in order to secure the traffic to the direct lines, the rates are so adjusted. If on the other hand the movement does not appear sufficient to warrant, or necessitate the reduction, the rates are not reduced. I have a case in mind which has been developed within the last week—a shipment from Detroit, Mich., going to Macon, Ga., through the ports of New York and Charleston, upon which the established tariff rate from New York was cut 50 per cent. Even the tariff rates fixed by the Southern Railway & Steamship Association from Cincinnati, which, added to the rate from Detroit to Cincinnati, would make 72 cents per 100 pounds, was cut fifteen per cent. It has, however, not been the custom or practice of the railroads or rate committee of the association, to always reduce its rates to meet such competition. The rates have only been reduced when it appeared that the volume of traffic moved in that way on cut rates called for a reduction.

Q. 20. In your answer to question No. 18 you stated that in fixing rates to and from Montgomery and Selma, the rate committee of your association has invariably taken into consideration the rates by water, and by rail and water, from the East and West to Mobile plus the rates of the Alabama steamers from Mobile to Selma and Montgomery. What territory do you intend to cover by the word "west;" and how does traffic get from that territory by water to Mobile?

A. Speaking of the West, I mean traffic originating at Memphis, Hickman, Columbus, Cairo, St. Louis, Evansville, Henderson, Louisville, and Cincinnati. Also, business from Pittsburg, Wheeling, and points on the Ohio river above Cincinnati. Also, business from Chicago, Peoria, Terre Haute, and Indianapolis, and interior Illinois, Indiana, Wisconsin, and Minnesota. I also mean business from Kansas City and the territory tributary to Kansas City, to wit: Kansas and Missouri. The business from this interior western country is brought by rail to the Ohio and Mississippi rivers at Cairo, St. Louis, Memphis, Evansville, and the other Ohio and Mississippi River points. It is carried by steamers, and often barges, at very low rates of transportation to New Orleans, thence transported in schooners or over a short-rail haul from New Orleans to Mobile, thence reshipped by the steamers up the Alabama river. The rates of transportation on the Ohio and Mississippi rivers are extremely low. The business of New Orleans has increased immensely within the past few years on this account; and whether the shipments and traffic from the West go direct from the original points of shipment through New Orleans and thence to Mobile, for Montgomery and Selma, is not always material, although large movements are made on through bills of lading;, but when not so made, the conditions are such at New Orleans that the produce of the West can be reshipped from that city, or purchased in that city, and sent to Montgomery and Selma, at less rates than the direct rail lines have at times made. And shipments would be made over the competing routes indicated if the rates of the rail lines were materially advanced. There is considerable business moving all the while via those competing routes, notwithstanding

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the existence of the all-rail rates by the direct lines, but the railroads have not deemed it wise or proper to make any further reductions to Selma or Montgomery at this time. I may add, this competition has been continuous for many years, and has caused a shrinkage, a reduction of rates to Montgomery and Selma which is quite large during the same time.

Q. 21. Before the C., N. O. & T. P. railway was completed from Cincinnati to Chattanooga, what were the first-class rates from Cincinnati and from Louisville, respectively, to Atlanta and Augusta, respectively?

A. Before the completion of the Cincinnati Southern railway from Cincinnati to Chattanooga, which is now known as the C., N. O. & T. P. railroad, the first-class rate from Cincinnati to Augusta was $1.30 per 100 pounds. The rate at the same time from Louisville to Augusta was $1.10 per 100 pounds. The rate from Cincinnati to Atlanta was $1.30 per 100 pounds, and from Louisville to Atlanta $1.10 per 100 pounds. These rates are quoted from the tariff which took effect September 19th, 1879, and remained in effect until the completion of the Cincinnati, New Orleans & Texas Pacific railroad in 1880.

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Q. 22. I notice from your last answer that the rates from Cincinnati to Augusta and from Cincinnati to Atlanta were in each instance 20 cents per 100 pounds more on first-class freight than from Louisville. What is the present difference in rates between Cincinnati and Louisville to Atlanta and Augusta on first-class freight?

A. There is no difference. The rates are the same from both points.

Q. 23. Please give a full history of how the rates from Cincinnati to Atlanta and Augusta came to be reduced to the rates from Louisville to Atlanta and Augusta, and in this connection state whether the Cincinnati Southern railway and the Louisville & Nashville railway were, or were not, members of the Southern Railway & Steamship Association at the time said reduction was made.

A. Both roads were members of the Southern Railway & Steamship Association, and were represented on the rate committee. Upon the completion of the Cincinnati, New Orleans and Texas Pacific railroad, formerly known as the Cincinnati Southern, the distance from Cincinnati to Atlanta was shortened somewhat, viz: 112 miles. The distance from Louisville was shortened 24 miles at the same time, thus making the actual short-line distance from Louisville to Atlanta 450 miles and from Cincinnati to Atlanta 473 miles. The Cincinnati, New Orleans & Texas Pacific railway, as soon as its road was opened for business, insisted that inasmuch as the distances from Cincinnati and Louisville, Ky., to Atlanta was practically the same, the rates from Cincinnati should be the same as the rates from Louisville. The Louisville & Nashville on the other hand took the position that the distance was greater, and inasmuch as Cincinnati was on the north bank of the Ohio river, and subject to an arbitrary charge for bridge toll, that the rates from Cincinnati should be higher than from Louis-

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ville. The question was submitted to the rate committee of the Southern Railway and Steamship Association and elaborately discussed by the various members of the rate committee participating in the discussion. A vote being reached upon the question, it was decided in favor of the Louisville & Nashville railroad by a vote of 5 to 4, the following roads voting against the proposition to make the rates the same from Cincinnati as Louisville, to wit: The Louisville & Nashville, Georgia Railroad and Banking Company, Coast Line Steamship Company, Richmond & Danville Railroad Company, Central Railroad Company of Georgia. Those voting for the proposition were as follows: Cincinnati Southern, Norfolk & Western, Western and Atlantic, and South Carolina railroad. Not voting: The East Tennessee, Virginia and Georgia. At the time this question was considered the association agreement did not require a unanimous vote for or against a proposition, a majority vote being sufficient to either defeat or carry a proposition. The result of this vote against the proposition insisted upon by the Cincinnati Southern Railroad Company was entirely ignored by that company. It positively declined to abide by the action of the committee and adhered to its original purpose of making the same rates from Cincinnati to Atlanta, Augusta and other points reached through Atlanta as were made from Louisville to and through the same points. And while strenuous efforts were made to induce or compel, if you please, the Cincinnati Southern Railway Company to comply with the judgment of the committee, all such efforts proved unavailing and the rates from that date, 1880, up to the present time, have been the same from Cincinnati to the territory in question as from Louisville.

Q. 24. State whether or not there was ever any controversy between the C. N. O. & T. P. R. R. and the Louisville & Nashville R. R., relative to rates to and from Birmingham. If so, state
302 the nature of the controversy briefly, and give the full history of it, and state whether said roads were then members of said association.

(Petitioners' counsel objects to this question for the reason that the testimony sought does (not) illustrate the issue in the case. The competition between the Louisville & Nashville R. R., C. N. O. & T. P. R. R., between Louisville and Cincinnati, on the one hand, and Birmingham as a point of destination, not illustrative of the issue involved in this case.)

(Defendants' counsel explains the object of the question to be an answer to a ruling made by the Interstate Commerce Commission in this case, ordering first-class rates from Cincinnati to Atlanta to be reduced from $1.07 to $1.00 per 100 pounds, because a rate of 89c. per 100 pounds on first-class freight obtained between Cincinnati and Birmingham.)

A. There was a controversy between the two roads as to what rates should be made from Cincinnati and Louisville to Birmingham and the territory tributary to Birmingham. I am not sure whether both, or either, of the roads were members of the Southern

Railway & Steamship Association at the time this controversy took place; but some time after the Cincinnati Southern road had carried into execution its purpose to make the same rates from Cincinnati to Atlanta as were made from Louisville to Atlanta, it declared its purpose to make the rates from Cincinnati to Birmingham, etc., much lower, because of the low rates from Memphis to Birmingham, which of course affected the rates from Louisville to Birmingham. The Southern Railway & Steamship association had fixed the rates from Cincinnati and——

(Petitioner objects to witness stating the rates as fixed by the tariff sheets of the association, on the ground that those rates are in writing and are the best evidence of what they are.)

Answer continued. The Southern Railway & Steamship Association had fixed the rates from Cincinnati to Birmingham, on first-class, 20 cents per 100 pounds higher than the rates from Louisville, and 24 cents per 100 lbs. higher than from Memphis. Various efforts were made by the Louisville & Nashville R. R.
303 Company to arrive at some amicable adjustment of the question in dispute, and the Cincinnati Southern management expressed a purpose also to arrive at some adjustment, but adhered to its demand of making the rates from Cincinnati lower, as compared with the rates from Memphis and from Louisville. The point not being yielded, the Cincinnati Southern R. R. gave notice and put into effect the reduced rates from Cincinnati. The lines from Memphis reduced their rates, and the Louisville & Nashville Company thereupon reduced the rates from Louisville, so as to observe the former differences in the rates from the two points. This was followed by a reduction of the rates via the Cincinnati Southern from Cincinnati, and again met by a reduction of the rates on the part of the lines from Memphis, and Louisville. The reductions were continued from all of the three points from day to day, until the rates of transportation on the heavier classes of freight had been reduced to 5 cents per 100 pounds, and in some cases even less. This contest continued for some time. Finally it was agreed that rates should be restored, and a ten cent difference observed; that is, a rate of ten cents higher from Cincinnati than Louisville, and fourteen cents higher than Memphis, on first class, until such period as the question could be submitted to some tribunal or board of arbitration for settlement. The question was, after some delay, submitted to Judge Thomas M. Cooley, as arbiter, who rendered his decision, fixing the agreed difference in the rates from Louisville and Cincinnati to Birmingham and that territory at 10 cents per 100 pounds, and Memphis 14 cents per 100 pounds, which difference remains in effect now.

Q. 25. What is the present rate on first-class freight from Cincinnati to Birmingham, and how did that rate happen to be made?

A. Present rate is 89 cents. It was made so by the Cincinnati, New Orleans & Texas Pacific Company; am not now advised as to why that company insisted upon making that rate.

Q. 26. What were first-class rates from Cincinnati to Atlanta and Augusta in 1875 or 1876, when Mr. Albert Fink became com-
304 missioner of the Southern Railway & Steamship Association?

A. I have been unable to find any record showing the rates at that time published by the association, of which Mr. Fink was commissioner. The first record of rates published by the association, which were made by the rate committee of the association, were those which went into effect on the 5th of January, 1879. The first-class rates from Cincinnati to Atlanta were then fixed at $1.39 per 100 pounds. The rate from Cincinnati to Augusta was fixed at $1.30 per hundred pounds.

(It appearing that the witness in answer to this question testified from memorandum, petitioners' counsel objects to the answer upon the ground that the memorandum is the best evidence of the facts to which he testified. That the memorandum cannot be used unless made a part of the deposition.)

Q. 27. What connection, if any, did you have with the Western & Atlantic Railroad Company, a corporation which had control of the Western & Atlantic railroad prior to the execution of the lease of that road by the State of Georgia to the Nashville, Chattanooga & St. Louis Railroad Company?

A. I had no connection with the Western & Atlantic Railroad Company before the lease of the Western & Atlantic railroad to the Nashville, Chattanooga & St. Louis Railroad Company. As an officer of the Louisville & Nashville Railroad Company, which company was a large holder of the shares in the old lease, I did, from time to time, take an interest in the business affairs of the Western & Atlantic Company.

Q. 28. After the N. C. & St. L. R'y Co., leased the W. & A. R. R., did you have any, if so, what connection with the assets of the old W. & A. R. R. Co.?

A. The old lease of the Western & Atlantic road expired in December, 1890; for the purpose of winding up the affairs of the Western & Atlantic Company (old lessees), I was, in conjunction with Governor Brown, appointed a receiver of the old lease company, and with him took charge of the business of the old company as soon as the lease expired.

305 (Petitioners' counsel objects to so much of this answer as states the purposes and objects specified in the bill under which he was appointed receiver. The pleadings being the best evidence, both as to its purposes and the order of the court therein.)

Q. 29. State whether any, and if so, what part of the assets or property of the old W. & A. R. R. Co., went into the possession of the present W. & A. R. R. Co., or of the N. C. & St. L. R'y Co., the present lessee of the W. & A. R. R.

A. The old lessees made no delivery of any property to the new lessees, except such as was considered under the old lease to be the

property, which ought to be returned to the State in the discharge of their obligations to the State. The delivery of this property was made to the State, except, perhaps, in some minor matters. It was agreed by the State that the delivery should be made direct to the new lessees. What I mean to say is, that in the delivery of the road, rolling stock, appurtenances, etc., the old lessees delivered either to the State direct, or upon the order of the State to the new lessees, such property as they believed would fully discharge their obligation to the State for the return of the road and its equipment, appurtenances, etc., under the old lease contract. There was property delivered to the State, or to the new lessees for the State, such as additional side tracks, and other improvements which the old lessees claimed they should be paid for by the State, which claim was submitted to a tribunal appointed by the State, for the purpose of adjudicating the rights of the old lessees.

Q. 30. Excepting such of the property and assets of the old W. & A. R. R. Co., as were delivered to the State, or to the new lessees under the direction of the State, and as property belonging to the State, what became of the assets and property of the old W. & A. R. R. Co.? I do not wish you to go into particulars or details, I only wish to know generally what became of them.

A. The receivers took possession of this property, consisting of cars, engines, and other effects, which they have, as far as they have been able, converted into money for the benefit of the shareholders in the old lease.

306 (Petitioners' counsel object to this question and answer, because the evidence sought does not illustrate the issue in the case, and is not authorized by the pleadings in the case.)

Q. 31. What is the local rate via the Baltimore & Ohio R. R. on first-class freight, from Cincinnati to Baltimore?

A. I cannot answer that definitely.

Q. 32. Do you know what the local rates on first-class, by steamship, from Baltimore to Savannah are, or do they have any published, or established first-class rates?

A. The rate which is claimed as the first-class rate, from Baltimore to Savannah and Charleston is 38 cents per 100 pounds. I am satisfied, however, that this rate is not always maintained; that the rate on this class of freight is oftener 30 cents, or even less than 30 cents per 100 pounds.

Q. 33. Can you explain why rates on first-class freight from Cincinnati to Atlanta have been made the same as from Cincinnati to Augusta?

A. The rates to Augusta are made to as nearly conform to the rates from the East, (that is, New York, Philadelphia and Baltimore, and Richmond,) as condition will warrant or seem to call for. The rates to Augusta ought, doubtless, to be less from Cincinnati, in order to give Cincinnati and other cities in the West, having relative rates, a good opportunity of competing for the trade of Augusta. And I will add, in this connection, the cities of the West, including the city of Cincinnati, have for years been very urgent in their de-

mand for reduced rates of transportation to Augusta and other points, upon the ground that the existing rates from the West to Augusta are too high as compared with the rates from Baltimore, Richmond, Philadelphia, New York and other eastern ports to Augusta, and have filed with the interstate commission a complaint for the purpose of having the rates from Cincinnati, Indianapolis, Chicago and other western cities to Augusta, etc., reduced. The rates to Atlanta, from Cincinnati, are made the same as to Augusta, because the railroads feel that it would be improper for them to fix rates to Atlanta higher than to Augusta; that the competition between those two cities for trade, and the railroad facilities via competing
307 routes, which the city of Atlanta possesses, entitles that city to rates from the West equal to those which are made to Augusta on that class of business. The railroad managers and members of the rate committee, connected with the Southern Railway and Steamship Association, do not believe that it would be proper, simply because Atlanta has no river navigation, to fix the rates to Atlanta so as to allow the cities of Augusta, Macon, Montgomery, Selma, Columbus, Rome and Chattanooga, which have the benefit of river competition, to practically encircle Atlanta, and to take from Atlanta the trade and the benefit of the competition, which the people have labored for years to establish in Atlanta.

Q. 34. Why is the rate from Baltimore, via Augusta, to Atlanta, the same as the rate from Cincinnati, via Atlanta, to Augusta?

A. The rate from Baltimore to Atlanta, through Augusta, is made on a combination, allowing the steamers from Baltimore to Charleston 38 cents per 100 pounds, to which is added the rate from Charleston to Atlanta, of 69 cents, which rate has been assented to as the proper rate from Savannah, Port Royal, Brunswick and other South Atlantic ports, by the Georgia State commission, to Atlanta, Ga. This rate from Baltimore to Atlanta is made upon the assumption that the steamers between Baltimore and Charleston will charge their full rate of 38 cents per 100 pounds. As before stated, I do not believe this full rate is always charged. Yet the rate committee of the association has never, on account of a cut of these rates, authorized the making of any less rate from Baltimore to Atlanta. The railroads from Cincinnati to Atlanta have—for a period extending back to 1879, perhaps to an earlier date—taken the position that the rates from Louisville should in no case be higher to Atlanta than the rates from Baltimore to Atlanta, the prorating distance being practically the same. When the Cincinnati Southern, in 1880, determined to make the same rates from Cincinnati as were made from Louisville, it fixed the same rates from Cincinnati to Atlanta that were made from Baltimore to Atlanta. I am fully persuaded, from many years of experience and investigation of this subject, that the rates from Cincinnati to Atlanta should not be higher
308 than from Baltimore to Atlanta. The business of Richmond, Va., has of late years, on certain class of freight, become much of a competitor for Cincinnati and other cities in the West for the trade of Atlanta, Augusta and other points in this section; and if the question of rates from Baltimore, or rather the competi-

tion from Baltimore, could be largely eliminated, the competition from Richmond would still exist, and doubtless grow under such conditions.

Q. 35. Why is the rate on first-class freight from Baltimore via Augusta, less to Atlanta than it is to Social Circle, which is nearer Augusta than Atlanta is?

A. The reasons are obvious; the rates to Augusta are practically forced upon the railroads; the rates to Atlanta have been made by all lines from the East and the West, in order to enable Atlanta to maintain her position in competition with Augusta, Macon, Columbus, Montgomery, Selma, Rome, Chattanooga, etc., and to give to Atlanta such facilities as the extraordinary railroad advantages, which Atlanta possesses, ought to entitle her to. The town of Social Circle has but one railroad, while the city of Atlanta has seven, extending from Atlanta in every direction, east and west, as well as north and south. The conditions therefore are entirely unlike. The transportation rate is worth less to the business man of Atlanta, who has seven or eight roads bidding for his patronage, than to the business man of Social Circle, who has but one line to bid for his business. I might illustrate this by saying—while the man who had $1 may consider himself in a better condition than the man who has none at all—the man who has seven or eight dollars is in infinitely better condition than the man who has but one; and it would be manifestly unjust to say that the man who has eight dollars, whether he has earned his eight dollars, or they were given to him, should not be able to utilize his resources to a better advantage than the man who has but one dollar.

Q. 36. Is the rate from Baltimore to Social Circle, via Augusta, made by a combination on Augusta, or on Atlanta?

A. The rates are made by a combination on Atlanta. Taking the rate of $1.07 per 100 pounds, from Baltimore to Atlanta, and adding thereto the rate of 30 cents per 100 pounds, which
309 is the Georgia commission rate from Atlanta to Social Circle, makes the total rate of $1.37.

Q. 37. What would the rate be from Baltimore, via Augusta, to Social Circle if the combination had been made on Augusta instead of making it upon Atlanta?

A. $1.40 per 100 pounds; the rate to Augusta being 89 cents from Baltimore and the rate from Augusta to Social Circle being 51 cents per 100 pounds.

Q. 38. Why is the rate to Social Circle the same from Baltimore, via Augusta, as from Cincinnati, via Atlanta?

A. Because both combinations are made on Atlanta, and the rate from Cincinnati to Atlanta is the same as from Baltimore to Atlanta.

Q. 39. Suppose the rates from Cincinnati, via Atlanta, to Augusta were materially raised above what they are now, on first-class freight, what would be the effect upon the volume of the traffic in such freight that would be carried by the railroad lines running from Cincinnati, via Atlanta to Augusta?

A. The effect would be to divert a large part of the business from

Cincinnati, and carry it, or rather transfer it, to Baltimore, Philadelphia, New York and Richmond. The railroads leading from the West via Cincinnati have never felt, and do not now feel, that the relative adjustment of rates between Cincinnati and Augusta, and Baltimore, Philadelphia, New York and Augusta, are such as to give Cincinnati the proportion of the business and trade of Augusta, which Cincinnati should have. But a reduction of rates from Cincinnati to Augusta would entail a like reduction from all other cities in the West; thus causing a large loss of revenue to the railroads, which they are not able to bear; and also because a reduction from Cincinnati and other western cities to Augusta, would doubtless be met by the lines from Baltimore, Philadelphia, New York, etc., to Augusta, which reduction, upon the part of the lines from Baltimore, Philadelphia and New York could be made by such lines without a serious loss of revenue, (I mean the regular lines) because such reduction would have been the means of taking from the irregular lines, consisting of steam and sail vessels,
310 a considerable portion of the business which said lines have from time to time carried at less rates than the regular lines were charging. To advance the rates to Augusta from the East and West, even if it were practicable, would result in transferring the business of Augusta, Macon, and other interior points to the coast. It would enable the city of Charleston to become the distributing market for a large part of the territory now supplied by the city of Augusta, and the same may be said of Macon, Atlanta, and other points similarly situated. That is to say, an advance of rates, if it were practicable to maintain them, would result in taking from the interior cities of Georgia a large trade which those cities have built up, and transfer it to Charleston, Port Royal, Savannah, Brunswick, Jacksonville, Fla., Wilmington, N. C., and other coast points, which transfer or diversion would be ruinous to the business interests of the interior cities, as well as the direct all-rail lines running from Cincinnati and other points in the West which now participate in the transportation of this traffic.

Q. 40. Suppose the rates from Cincinnati, via Atlanta, to Augusta, on first-class freight, were materially raised above what they are now, and suppose the rates from New York, Philadelphia, Baltimore and Richmond to Augusta were allowed to remain as they are, what would be the effect on the volume of the traffic in such freight that would be carried by the railroad lines running from Cincinnati, via Atlanta, to Augusta? What would be the effect upon Cincinnati, as a selling market of such freights, and what would be the effect upon Augusta as a purchasing market of such freights?

A. It would be difficult for me to make an accurate estimate of the volume of business, either in tonnage or revenue to the railroad, or in a commercial sense to the people of Cincinnati, which would be lost to the commerce of Cincinnati, or the railroads leading from Cincinnati to Augusta. I am not fully advised, not being in possession of the statistics so as to be able to say what the extent of the business is, which is competitive between Cincinnati, Richmond,

Baltimore, New York, Philadelphia and Boston, in the trade
311 of Augusta. In certain branches of business, such as canned goods, soaps, oils, candles, vinegar, machinery and vehicles of all kinds, the competition is very active, and the complaint of the existing rates from Cincinnati to Augusta, as compared with the rates from Baltimore, New York, Philadelphia, and Boston, to Augusta, have been continuous and vigorous, so that the railroad managers and members of the rate committee have become almost convinced, many of them entirely so, that the rates of transportation from Cincinnati to Augusta and other points, in this territory, ought to be reduced, rather than advanced. I am of the opinion that any material advance of the rates from Cincinnati to Augusta would have the effect of driving away from Cincinnati a large proportion of the trade, which Cincinnati has built up with Augusta.

As to the second proposition, I believe that an advance of the rates from Cincinnati to Augusta would practically force the people of Augusta to trade alone with the people of Richmond, Baltimore, Philadelphia, New York and Boston, and the elimination of Cincinnati, as a selling market, would enable the cities of Baltimore, Philadelphia, New York and Boston to exact higher prices from the people of Augusta than they are now exacting in active competition with Cincinnati. The city of Cincinnati is not the only western city which competes with the East for the trade of Augusta on the articles referred to. The cities of St. Louis, Louisville, Chicago and other cities in the West are also participants and competitors for the trade of Augusta. An advance of the rate from Cincinnati to Augusta would cause a relative advance of rates from the other western cities named, and thus what would divert the trade from Cincinnati and prevent Cincinnati from competing with Richmond, Baltimore, Philadelphia, New York, and Boston, for the Augusta trade would also prevent the cities of Louisville, Evansville, St. Louis, Indianapolis and Chicago from competing for the Augusta trade.

Q. 41. Assuming that Cincinnati is now able successfully to compete with Baltimore, and the other eastern cities in the sale of first-class freight, in the Augusta market, as the rates on such
312 freight are now adjusted from Cincinnati to Augusta, and from Baltimore to Augusta, and then suppose that the rates on such freight from Cincinnati to Augusta should be materially increased, the rates from Baltimore to Augusta being allowed to remain as they are, what would be the effect upon the volume of traffic in such freight, that would be carried by the railroads running from Cincinnati to Augusta? I do not expect you to be able to estimate exactly what the effect would be in dollars and cents; I wish to know whether the amount of traffic that would be carried by said railroads would be increased or diminished by such a change of rates.

A. The traffic of the railroads between Cincinnati and Augusta would be materially reduced. I cannot indicate to what extent, but my deliberate judgment is that not less than one-half of the

business would be diverted from the roads between Cincinnati and Augusta.

Q. 42. Suppose the rate on first-class freight from Cincinnati, via Atlanta, to Augusta should be raised from $1.07 per 100 pounds, which is the present rate, to $1.37 per 100 pounds; the rate from Baltimore to Augusta on such freight remaining as it now is, at 89 cts., and assuming the other fact to be, as assumed in the last question, what would the effect be upon the amount of traffic in such freight that would be carried by the railroads running from Cincinnati, via Atlanta to Augusta?

A. It would amount to a practical loss of all the business.

Q. 43. State such lines as are now actually competing for business between Cincinnati and Atlanta, numbering each line 1, 2, etc., and giving the names of the different railroads composing parts of such lines.

A. 1. Cincinnati Southern; Cincinnati to Chattanooga; thence Chattanooga to Atlanta, via the W. & A. R. R.

2. Cincinnati Southern to Chattanooga; thence Chattanooga to Atlanta by the E. T., V. & G. R. R.

3. Louisville & Nashville—Cincinnati to Nashville; N. C. & St. L., Nashville to Chattanooga; thence Chattanooga to Atlanta, via W. & A. R. R.

313 4. Louisville & Nashville to Nashville; N. C. & St. L., Nashville to Chattanooga; thence Chattanooga to Atlanta, via E. T., V. & G. R. R.

5. Ohio & Mississippi, Cincinnati to Louisville; Newport News & Mississippi Valley, Louisville to Memphis; Memphis & Charleston, Memphis to Chattanooga; thence Chattanooga to Atlanta, via the E. T., V. & G. R. R.

6. Ohio & Mississippi, Cincinnati to Louisville; Newport News & Mississippi Valley, Louisville to Memphis; Memphis & Charleston, Memphis to Chattanooga; thence Chattanooga to Atlanta, via W. & A. R. R.

7. Ohio & Mississippi, Cincinnati to Louisville; Newport News & Mississippi Valley R. R., Louisville to Memphis; Kansas City, Memphis & Birmingham, Memphis to Birmingham; thence Birmingham to Atlanta, via the Georgia Pacific R. R.

8. Ohio River steamers, Cincinnati to Memphis, thence Kansas City, Memphis & Birmingham to Birmingham, thence Birmingham to Atlanta, via the Georgia Pacific R. R.

9. Ohio River steamers, Cincinnati to Memphis; Memphis & Charleston, Memphis to Chattanooga, thence Chattanooga to Atlanta, via W. & A. R. R.

10. Ohio River steamers to Memphis, Memphis & Charleston, from Memphis to Chattanooga, thence Chattanooga to Atlanta, via the E. T., V. & G. R. R.

11. Ohio River steamers to Huntington, Miss., thence Georgia Pacific from Huntington to Atlanta, Ga.

Q. 44. State such lines as are now actually competing for business between Cincinnati and Augusta, numbering each line 1, 2,

etc., and giving the names of different railroads forming part of such lines.

A. 1. Cincinnati Southern; Cincinnati to Chattanooga, thence Chattanooga to Atlanta, via the W. & A. R. R., thence Atlanta to Augusta, via the Georgia R. R.

2. Cincinnati Southern to Chattanooga; thence Chattanooga to Atlanta, via the E. T., V. & G. R. R., thence Atlanta to Augusta, via the Georgia R. R.

314 3. Louisville & Nashville; Cincinnati to Nashville; N. C. & St. L., Nashville to Chattanooga, thence Chattanooga to Atlanta, via W. & A. R. R., thence Atlanta to Augusta, via the Georgia R. R.

4. Louisville & Nashville, to Nashville, N., C. & St. L., Nashville to Chattanooga, thence Chattanooga to Atlanta, via the E. T., V. & G. R. R., thence Atlanta to Augusta, via the Georgia R. R.

5. Ohio & Mississippi, Cincinnati to Louisville, Newport News & Mississippi Valley, Louisville to Memphis, Memphis & Charleston, Memphis to Chattanooga, thence Chattanooga to Atlanta, via E. T., V. & G. R. R., thence Atlanta to Augusta, via the Georgia R. R.

6. Ohio & Mississippi, Cincinnati to Louisville; Newport News & Mississippi Valley, Louisville to Memphis; Memphis & Charleston, Memphis to Chattanooga; thence Chattanooga to Atlanta, via W. & A. R. R.; thence Atlanta to Augusta, via the Georgia R. R.

7. Ohio & Mississippi, Cincinnati to Louisville; Newport News & Mississippi Valley R. R., Louisville to Memphis; Kansas City, Memphis & Birmingham, Memphis to Birmingham; thence Birmingham to Atlanta, via the Georgia Pacific R. R., thence Atlanta to Augusta, via the Georgia R. R.

8. Ohio River steamers, Cincinnati to Memphis; thence Kansas City, Memphis & Birmingham to Birmingham, thence Birmingham to Atlanta, via the Georgia Pacific R. R., thence Atlanta to Augusta, via the Georgia R. R.

9. Ohio River steamers, Cincinnati to Memphis; Memphis & Charleston, Memphis to Chattanooga, thence Chattanooga to Atlanta, via W. & A. R. R., thence Atlanta to Augusta, via the Georgia R. R.

10. Ohio River steamers to Memphis; Memphis & Charleston, from Memphis to Chattanooga, thence Chattanooga to Atlanta, via the E. T., V. & G. R. R., thence Atlanta to Augusta, via the Georgia R. R.

315 11. Ohio River steamers to Huntington, Miss., thence Georgia Pacific from Huntington to Atlanta, thence Atlanta to Augusta, via the Georgia R. R.

By way of explanation and correction of my statements with respect to the lines competing for traffic between Cincinnati and Atlanta, I desire to state that the first four lines named are active competitors, while the others are not so, but are quite available routes and could actively compete if they desired to do so. It is proper, also, to add that in naming the lines between Chattanooga and Atlanta, which compete for traffic between Cincinnati and Atlanta, I omitted the Chattanooga, Rome & Columbus division of the Central

Railroad of Georgia, which, connecting with the Georgia Pacific railroad at Kramer, fifty-three miles west of Atlanta, is also a carrier and competitor for this traffic. What is said by way of explanation and correction with respect to competing lines for Atlanta business, applies with equal force to the traffic between Cincinnati and Augusta; the business from Cincinnati to Augusta all passing through Atlanta over the competing lines named. The Central and Richmond & Danville have, each, lines extending from Atlanta to Augusta, but are not seeking to control this Augusta traffic because of the somewhat circuitous routes over which the business would be obliged to go if sent via either of those lines.

Q. 45. What effect, if any, have the operations of the Southern Railway & Steamship Association produced relative to secret rebates given by the carriers to shippers in the territory covered by the association?

A. The effect has been very good. The tendency has been to stop all such practices. Generally speaking, the efforts have been successful. I have been unable during my term as commissioner, to elicit any evidence showing that such practices are now indulged in by the lines which are members of the association.

Q. 46. State what effect, if any, have the operations of the Southern Railway & Steamship Association produced relative to preventing rate wars in which freights are carried at less than cost to the carrier.

316 A. The effect has been good, and resulted in the adjustment of questions, either by agreement or arbitration in a number of cases, in fact, almost every case which was likely to produce a war of rates and carry them to a point which would not pay the cost of transportation. The whole tendency of the work of the association has been in the direction of producing harmony between the different members and the adjustment of the various questions in dispute, without a resort to war of rates. And to that extent has accomplished much for the railroads and communities, which through the operations, or from the effects, of rate wars, would have suffered from discrimination in favor of certain localities and individuals against other localities and individuals.

Q. 47. What, in your opinion, is a reasonable rate on first-class freight, in less than car-loads, from Cincinnati to Atlanta? What is a reasonable rate on such freight from Cincinnati to Augusta? Give your reasons for any opinion you may express.

A. The rate of $1.07 from Cincinnati to Atlanta, on first-class goods, per one hundred pounds, is, in my judgment, reasonable to transportation companies, as well as the people of Atlanta. The same rate, *i. e.*, $1.07 per hundred pounds, from Cincinnati to Augusta, can also be considered reasonable; it is certainly not unreasonable. If it were practicable to make the rates from Cincinnati to Augusta a fraction higher than the rates from Cincinnati to Atlanta, it would not be unreasonable to do so, but in view of the conditions and circumstances which surround the business of Augusta it would not be just or reasonable to the transportation companies or the business interests of Augusta, to advance the rate to Augusta;

nor would it be reasonable or fair, in my judgment, under the circumstances, to disturb the existing basis of rates from Cincinnati to Atlanta or Augusta. I believe both rates on the class of freight in question will furnish fair compensation to the railroad lines competing for the business, but I do not, by this, mean to say that a higher rate to both points would be an extortion or an imposition on the people of Augusta, especially, in view of the fact that the railroads which compete for this traffic find it very difficult to meet their financial obligations.

317 Q. 48. State briefly what are the circumstances and conditions which substantially affect the transportation of property, by railroads or other carriers.

A. They are varied, and so far-reaching that it would be difficult to give them in a brief answer. The rail carrier must consider:

1. The sum of money invested in the construction of the road.

2. The grades and curvatures which increase or diminish the number of cars to be hauled in each train.

3. The number of tunnels, bridges and trestles to be kept in repair and maintained.

4. The cost of maintaining and operating the road.

5. The character of the country which the road traverses, and how much of the road lies in an unproductive country, not susceptible of much development.

6. The length of the haul over the different railroads, and especially over those which originate or deliver the traffic.

7. The terminal expenses incurred in receiving, delivering, loading, or unloading the traffic carried.

8. The volume of the traffic offered for transportation.

9. The risk of damage to the traffic as prepared and offered for shipment.

10. The value of the traffic, in a commercial sense, to be transported.

11. The weight per cubic foot, or yard of the traffic hauled.

12. The circumstances and conditions which surround the traffic at the point of shipment, as well as the point of destination.

13. Whether or not the traffic offered is in competition with a rival line from the same point of shipment.

14. Whether or not the traffic offered is in competition with a rival line from a rival market.

15. The value of the article offered; I mean the commercial value, at point of shipment as compared with its value at destination.

16. The possibilities of being able to originate or develop a class of traffic which has not before been developed, but which,

318 with the aid of transportation companies, may be susceptible of development, and made a remunerative business.

17. The direction in which the traffic offered is to be moved, *i. e.*, whether such traffic is to go in a direction requiring additional cars for its movement, or whether it will furnish tonnage and revenues on cars, which would otherwise be returned empty. I am not

sufficiently familiar with the details governing the transportation of traffic by water carriers to state clearly what the circumstances and conditions which substantially affect the transportation of property by such carriers are; they, however, are somewhat different from those which surround the carrier by rail. Carriers which transport by water are not compelled to construct roadway, lay tracks, build bridges or trestles, or keep them in repair. They float their steamers or vessels on navigable rivers or the open sea, and are, therefore, not obliged to make the large investments which are made by the rail carriers, and to that extent in an important item possess advantages which are not possessed by the carriers by rail.

(All of the foregoing deposition was seasonably objected to by petitioners' counsel for immateriality, irrelevancy, and incompetency.)

Witness states: I wish to correct my answer to question (direct) 25. While the rate from Cincinnati to Birmingham was made 89 cents by the Cincinnati, New Orleans & Texas Pacific Co., and was also so made by the Louisville & Nashville Co., the rate from Cincinnati to Birmingham was reduced because upon completion of the Kansas City, Memphis & Birmingham railroad, that road made a rate of 75 cents on first-class articles from Memphis to Birmingham; the distance from Memphis to Birmingham having been materially shortened by the completion of the Kansas City, Memphis & Birmingham railroad. The reduction of the rates from Memphis to Birmingham in order to preserve the relative adjustment of rates from points on the Mississippi and Ohio rivers entailed a reduction from Cairo, Evansville, Louisville and Cincinnati, thus fixing a rate from Cincinnati to Birmingham of 89 cents per 100 pounds on first class.

319 Cross-examination:

Q. 1. Is the Western & Atlantic railroad the property of the State of Georgia?

A. That is my understanding.

Q. 2. What is the exact corporate name of the company which operated the Western & Atlantic railroad for the twenty years prior to January, 1892?

A. The corporate name of the company which operated the W. & A. railroad, under the lease which expired in December, 1890, was, as I recollect it, the Western & Atlantic Railroad Co.

Q. 3. During the latter part of that period, say for three years preceding the expiration of the lease, was the Nashville, Chattanooga & St. Louis Railroad Company a large stockholder in the lease corporation?

A. The Nashville, Chattanooga & St. Louis Railway Company, was a stockholder, owning about one-third of the stock of the old lease company.

Q. 4. Since the expiration of that lease has the Western & Atlantic Railroad Company been operated by another corporation; if so, state the exact corporate name of the present company?

A. The Nashville, Chattanooga & St. Louis Railway Company, is the present lessee of the Western & Atlantic railroad. I am not sure under what corporate name the Western & Atlantic railroad is at present operated. The road, however, is operated by the Nashville, Chattanooga & St. Louis Railway Company, as lessee.

Q. 5. Does the Nashville, Chattanooga & St. Louis Railway Company operate the road under a lease directly from the State of Georgia, or does the lease from the State of Georgia run to some other corporation from which last-mentioned corporation, the Nashville, Chattanooga & St. Louis Railway Company, derives its right to operate the road?

A. My recollection is that the road was leased to the Nashville, Chattanooga & St. Louis Railway Company, and that company executed the lease contract with the State; as to whether or not
320 there are any provisions in the lease or the contract requiring the road to be operated under another corporate name, I do not now remember.

Q. 6. On 23d of June, 1891, and for more than six months prior thereto, was the Nashville, Chattanooga & St. Louis Railway Company operating the Western & Atlantic railroad?

A. The Nashville, Chattanooga & St. Louis Railway Company, as lessee, if under the lease act or contract it could be considered the lessee, did not get possession of the road until the 27th of December, 1890, and hence could have only operated the road from that date.

Q. 7. Is the Louisville & Nashville R. R. Co. the owner of a majority of the stock of the Nashville, Chattanooga & St. Louis Railway Co.?

A. That's my understanding.

Q. 8. And is Mr. Baxter, who conducted your direct examination, the general counsel of the Louisville & Nashville R. R. Company?

(By Mr. HILYER: Defendant's counsel object to this question on the ground that Mr. Baxter is not present, and that counsel here present at the examination is not at all informed of the facts or circumstances relating to this branch of this investigation, nor is he authorized to appear or act in regard to it.)

(Defendant's counsel also object to the question and answer next before the present one, on the ground that ownership of stock is in writing, and the writing should be produced to speak for itself.)

(Petitioners' counsel requires of the defendants' counsel to produce the evidence which he says exists in writing, as to the ownership of the Louisville & Nashville R. R. Co., of a majority of the stock of the N. C. & St. L. R. R. Co.)

A. Mr. Baxter is not the general counsel, as I understand it. He is the counsel of the road covering a certain district. The extent of that district I am not advised of.

Q. 9. What is the distance from New York to Atlanta and Augusta by the rail line, composed of the Pennsylvania system from New York to Washington, and the Richmond & Danville system and connecting lines?

321 A. To Atlanta, 874 miles; to Augusta, 797 miles.

Q. 10. What is the rate, if you know, by that line, from New York to Atlanta and Augusta on first-class freight, less than car-load lots?

A. I am not sure that there is a great deal of freight carried by this line from New York, but on whatever business is taken, the rate to Augusta would be $1.04 and to Atlanta $1.22.

Q. 11. You have spoken in your testimony of competition between carrier and carrier at both Atlanta and Augusta; are these two localities equally affected by such competition? Is there more of competition between carriers at the one place or the other?

A. The competition is stronger at Augusta. I will not say that there are any more competing lines centering in Augusta than Atlanta. The fact that Augusta is so much nearer the coast, and has the Savannah river extending from Savannah to Augusta, makes the competition more formidable at Augusta.

Q. 12. Are there not a greater number of competing lines between Cincinnati and Augusta than there are between Cincinnati and Atlanta?

A. In some respects there are. It has been possible in the past to compete for business between Cincinnati and Augusta via Baltimore and New York, in connection with vessels plying between New York, Baltimore, Charleston and Savannah. There is a line through Paint Rock which can compete from Cincinnati for Augusta business, although it has not been made an active competitor.

Q. 13. Is it a fact or not that there are thirteen competing lines between Cincinnati and Augusta and only six between Cincinnati and Atlanta?

A. I have no doubt but what an adjustment of rates from Cincinnati to Augusta, if it resulted in a material advance, would induce several lines which are not now competitors to become competitors for Cincinnati and Augusta business. Just how many I could not explain in detail, unless essential in this connection. The number would, in all probability, reach thirteen. While there are
322 not more than six lines now, actually competing for traffic between Cincinnati and Atlanta, there are at least six additional lines which could compete for the business.

Q. 14. So that you consider it that there are twelve possible competing lines to Atlanta and thirteen possible competing lines to Augusta; is that your understanding?

A. It is.

Q. 15. Have you just examined Mr. Culp's testimony and noticed his six lines which he calls competing lines between Cincinnati and Atlanta, and are the six additional lines which you testify as existing between those points, any of them in the list of six which he gives?

A. They are not.

Q. 16. Are any of the carriers over the six lines not included in Mr. Culp's list, members of the Southern Railway & Steamship Association?

A. Parts of such lines are.

Q. 17. Parts of all such lines?

A. Yes, sir.

Q. 18. If I understand you, you say that while there are not more competing lines to Augusta than Atlanta that the competition at Augusta is more formidable, and is that the reason why you testified in your direct examination that there has been complaint as to the existing rates to Augusta, which you characterize as continuous and vigorous?

A. The complaint as to rates to Augusta, has also been made with respect to rates to Atlanta, while the competition between carriers from Cincinnati to Augusta and Cincinnati to Atlanta, in point of number of lines competing for this traffic is about the same at Augusta as at Atlanta. The competition between Cincinnati and other cities of the West for the Augusta trade as against the cities of Richmond, Baltimore, Philadelphia, New York and Boston has added to the competitive forces which the rail lines from Cincinnati and the West are obliged to meet at Augusta.

Q. 19. In answer to question 40, you said that the complaint of existing rates from Cincinnati to Augusta has been continuous and vigorous; I now understand you to say that the complaint-

323 as to rates to Atlanta have been of the same character and amount as they have been as to Atlanta. Is that correct?

A. The complaints have been as to all points, including Atlanta, Macon, Rome and other competing points in this territory.

Q. 20. Are these complaints made by the carriers or by the shippers?

A. By the shippers, generally through their boards of trade, and freight bureaus or associations. Several of the carriers have reached the conclusion that the rates from Cincinnati and other western cities ought to be reduced, while the carriers from the East, on the other hand, insist that there ought to be no reduction.

Q. 21. Is your information in this respect derived from your official connection with the Southern Railway & Steamship Association?

A. It is in part. I have received communications from freight bureaus and associations representing western cities, addressed to me, setting forth their complaints. It has also been known to me for several years, while I was an official of the Louisville & Nashville railroad, when the same cities urged a further reduction of rates.

Q. 22. In your answer to the 40th interrogatory you speak of railroad managers and members of the rate committee as having become almost convinced, many of them entirely so, that the rates of transportation from Cincinnati to Augusta and other points in this territory ought to be reduced. Among those railroad managers and members of the rate committee, which I supposed to be the rate committee of the Southern Railway & Steamship Association, are there included any persons connected with the six or twelve lines which, as you have stated, compete, or can compete, for business between Cincinnati and those points in Georgia?

A. There are. [I won't say that such persons would favor a re-

duction if the rates from the East could be advanced, but in view of the rates prevailing from the East, several of the traffic men representing the railroads which compete for Augusta and
324 Atlanta business from the West believe that reductions from the West ought to be made.]

(Portion of above answer in brackets objected as irresponsive to the question.)

Q. 23. When you use the term "railroad managers" in your reply to question 40, do you mean the persons having the title of "manager," or do you mean the more important officers of the line, irrespective of the title given them by their company?

A. I mean in speaking of "railroad managers," such men as have general supervision of the entire management of the property, where men bearing that title have such supervision. In cases where responsibility for earnings rest upon traffic managers or general freight agents, I mean traffic managers and general freight agents.

Q. 24. Is the rate committee of the Southern Railway & Steamship Association made up of a representative of each line?

A. There are 23 members of the rate committee. There are 26 different companies which have signed the agreement; in some cases one member represents two companies. The two companies thus represented, being considered a part and parcel of one system.

Q. 25. How long has the existing rate on first-class freight, in less than car-load lots from Cincinnati to Augusta and Atlanta remained at $1.07 per 100 pounds?

A. The rate in 1879 was to Augusta $1.30; to Atlanta $1.39. In 1880 the rate to Atlanta and Augusta was made $1.10, to both points. I haven't the data to show how long the rate of $1.07 has been in effect.

Q. 26. Is it your recollection generally and without reference to data that the rate of $1.07 has been in effect for say over five years, with the exception of a few months, when the rate of $1.01 was in force?

A. I do not care to trust my recollection; I will, however, obtain the data and furnish it.

Q. 27. Would you be willing to say that there had been no change in the rate for the past two years, between those points?

325 A. I would prefer not to say until I have looked into the matter.

Q. 28. Do I understand that you have no present recollection that the rate now existing has prevailed for the last several years?

A. You understand me correctly.

Q. 29. You have testified that the rates Cincinnati to Atlanta could not be "materially" increased; please state what effect you desire to have given to the word "materially"?

A. I don't know that I can say anything more than the expression implies; I should consider an advance of two or three cents per 100 pounds on the lower classes of freight a material advance, or five to ten cents per one hundred pounds on first, second and third classes, a material advance of those rates.

Q. 30. Are you aware of any complaints on the part of any carriers that the present rates Cincinnati to Atlanta, and Cincinnati to Augusta, are too low?

A. I am not. The impression, as I gather it from intercourse with carriers, is that in view of the competition from the East they ought to be reduced. I do not mean by this, however, to say that if the rates from the East were advanced that there would be any disposition to reduce the rates from Cincinnati and the West.

Q. 31. Is that because if the rates were reduced from the East, the traffic would not bear the present rate?

A. Yes, sir; because the western cities, including Cincinnati, would find it difficult to hold a reasonable share of the trade as at present.

Q. 32. In your estimation, if the rates from the northeastern cities should be increased to Georgia points, could the Cincinnati lines reasonably, also, increase their rates in the present condition of affairs?

A. Yes; if the purpose was to give each section an opportunity of competing for the business of Augusta, Atlanta, etc., on the same basis that they now compete, any advance from the East would justify a like advance from Cincinnati and the West.

326 Q. 33. And that because, under that state of affairs, the traffic would bear the increased rate?

A. Not alone because the traffic would bear it, but because the railroads of this section of the country are very much in need of revenue and would feel warranted in advancing the rates to a certain extent in order to relieve themselves as far as possible, under the circumstances, from the financial embarrassment under which they are laboring.

Q. 34. And assuming a corresponding increase in the rates from the northeastern cities to Georgia points, the rates from Cincinnati might reasonably increase up to a point which would not interfere with the movement of the traffic, might it not?

A. The movement of some traffic depends upon the rate of transportation; the movement of all traffic from the East and the West to this section depends entirely or, largely at least, upon the consumptive demand. A material increase in the rate from either the East or West might materially curtail the movement or decrease the consumptive demand. Aside from this I do not think there would be any interference with the movement of the traffic.

Q. 35. I intended to inquire whether assuming that the rates from the northeastern cities correspondingly advanced, whether the Cincinnati rates might not also reasonably advance up to a point where the increased rate would not curtail the traffic, as you have expressed it?

A. Yes, sir; unless the rates were advanced so as to invite competition from other outside carriers, which under existing conditions are not competing for the traffic.

Q. 36. You have spoken of competition in the market and competition between carriers as affecting and reducing rates at the com-

peting points; that has been true of railroad business ever since your first connection with it, has it not?

A. It has.

Q. 37. And during all that time it has been the custom of carriers to make rates which were greater to the intermediate points, the shorter distance, than to competing points, has it not?

327 A. Yes; where the intermediate points were not competitive points. In some cases where traffic was being developed at an intermediate point in competition with a like kind of traffic at a terminal or competing point, it has been the custom to give the intermediate point such rates as would enable it to market its developed traffic or produce at points of competition with other markets.

Q. 38. If I understand you, you say that it has been the habit of railroad companies or carriers to make greater rates for the shorter distance to non-competitive points than they made to competitive points; are we to understand that these greater rates have been made solely on the grounds of the absence of competition either of carrier with carrier, market with market and product with product?

A. The rates have not always been made higher to intermediate points for the shorter distance than to competing points for the longer distance. In cases where the distance to the intermediate points from point of shipment is short, the rates to the intermediate point have been less than to the terminal or competing point. I illustrate this by saying that the rates from Chattanooga to a point 15 or 20 miles south of Chattanooga on the W. & A. railroad, are not as high as to Atlanta from Chattanooga. Dissimilar circumstances and conditions as we regard them, consisting of competition between rail lines, part rail and part water lines, between river and rail lines, between product and product of like kind from different section, and between market and market, and the inability to secure traffic and trade on the basis of rates to intermediate points, have been the prime factors in fixing the lower rates where such lower rates exist at terminal or competing points which have these competitive facilities and advantages.

(Answer objected to as not responsive to the question.)

Q. 39. Can you name a single locality, during the past ten years, which has been given a greater rate for the shorter distance than was given to a locality more remote except where conditions of competition existed or were supposed to exist at the more distant point?

328 A. If it were not for the competition of various kinds and the advantages which the more remote point enjoys in this respect there would be no necessity for making rates to the shorter intermediate point greater than those made to the more distant or remote points. I do not call to mind a single locality where a greater rate for the shorter distance was charged than that charged to a more remote locality except where conditions of competition

existed at the more distant point which did not apply at the point of shorter distance.

Q. 40. And that is true of your whole railroad experience?

A. It is.

Q. 41. You were informed several days ago, were you not, that you were to be a witness in this case, and investigated the subject with a view to testifying, did you not?

A. I was advised that I would be asked to testify and give a history of the organization and operations of the Southern Railway & Steamship Association; as to how the rates were made; the object of the organization, etc., but not as to any particular rate, but I made some investigations since this morning with reference to a particular rate, because I was asked a question that I could not answer definitely. I did make some investigations as to rates to this territory which have been made from time to time, assuming that probably something might be asked me with reference to them.

Q. 42. You testified that the rate of $1.07 Cincinnati to Augusta was a reasonable rate on first-class goods, in less than car-load lots. You also testified that the rate Cincinnati to Social Circle of $1.37 for the same service was reasonable; you recognize the fact, do you not, that Social Circle is 119 miles nearer Cincinnati than Augusta is, over the line of defendants' railroads?

A. I am of the opinion that $1.07 per hundred pounds Cincinnati to Augusta is a reasonable rate, and if the conditions would justify an advance of rates to Augusta, I do not believe that the rate if somewhat advanced, would be unreasonable, but in view of the conditions which surround Augusta and the traffic from the
329 East and West I do not believe it would be proper, just or reasonable to advance the rates from Cincinnati to Augusta. I consider the rate of $1.37 from Cincinnati to Social Circle a reasonable rate. I do not consider the rate excessive, nor do I consider the service rendered in transporting freight from Cincinnati to Social Circle as rendered under the same circumstances and conditions, which control the service rendered on shipments from Cincinnati to Augusta. If the conditions at Augusta and Social Circle were the same, I should say that the rate from Cincinnati to Augusta should be a fraction higher than the rate from Cincinnati to Social Circle; but under existing conditions I do not believe that the rates to Social Circle are unreasonable or unjust.

(Answer objected to as not responsive to the question.)

Q. 43. My inquiry was, and I repeat the question, whether in arriving at the conclusion that the Cincinnati rate to both these points was reasonable, you recognize the fact that the haul to Augusta was 119 miles greater than the haul to Social Circle; please answer that question.

A. The rate to Social Circle is reasonable, notwithstanding the fact that Social Circle is 119 miles nearer Cincinnati than Augusta. The rate to Augusta is reasonable and fairly remunerative in view of the larger volume of traffic going to Augusta; in view of the fact,

also, that a higher rate would result in the loss of traffic to the lines extending from Cincinnati to Augusta, and in further view of the fact that the conditions at Augusta will not admit of a material advance in the rates to Augusta, and also in view of the fact that a transportation rate is of less value to the merchant or manufacturer of Augusta than the value of the rate on the same class of freight would be to the merchant or manufacturer of Social Circle. A rate to Augusta unremunerative to the carrier would be just as unreasonable as a high rate which would divert the business from the carrier.

(Answer objected to as not responsive to the question.)

Q. 44. Please state whether or not you recognize the fact that Social Circle is 119 miles nearer Cincinnati than Augusta is, in arriving at the conclusion which you give that the rates to both places from Cincinnati are reasonable?

330 A. I don't consider that the differences of 119 miles in the distance, under the existing conditions, is much of a factor in arriving at the reasonableness or unreasonableness of the rates either to Augusta or Social Circle.

(Answer objected to as not responsive to the question.)

Q. 45. In reply to a question by Mr. Baxter, in which you attempted to give the considerations which were taken into account by the railroads in making rates, you stated there were seventeen different factors; the 6th of those was "the length of the haul over the different railroads, and especially over those which originate or deliver the traffic." The question which I desire to have answered is, whether in arriving at the conclusion that the rate from Cincinnati to Social Circle was a reasonable one, and the rate from Cincinnati to Augusta was a reasonable one, you recognize the fact that the haul to Social Circle was 119 miles less than the haul to Augusta?

A. The rate Cincinnati to Augusta is not based upon the actual miles hauled, but is largely controlled by other conditions, and the reasonableness of the rate to Augusta is measured by other conditions. In making the rate Cincinnati to Social Circle, the rate from Cincinnati to Atlanta is charged up to Atlanta, then what is known as the Georgia commission rate from Atlanta to Social Circle is added to that rate, fixing the through rate from Cincinnati to Social Circle. I do not believe that the question of how much nearer Social Circle is to Cincinnati than Augusta should have any bearing in fixing the rate to Social Circle. The question of distance from Atlanta to Social Circle and the rates from Atlanta to Social Circle have been the basis upon which the rates were made from Cincinnati to Social Circle. The roads in fixing the rates to Social Circle could not be unmindful of the fact that it was nearer Cincinnati than Augusta, but in fixing the rates to Augusta, they have looked to the conditions which they had to meet at Augusta; and in fixing the rates to Social Circle they have looked to the conditions which surrounded them in Atlanta and given the benefit of those conditions

up to Atlanta to Social Circle, adding to the Atlanta rate the
331 fixed local rate as authorized by the Georgia commission from Atlanta to Social Circle.

(Answer objected to as not responsive to the question.)

Q. 46. How much further is it from Cincinnati to Augusta than it is from Cincinnati to Social Circle by the lines of the defendant companies?

A. 119 miles.

Q. 47. In arriving at the conclusion that the rate from Cincinnati to Augusta was a reasonable one, and the rate 30 cents greater to Social Circle, is also a reasonable rate, did you take into consideration the fact that the haul is 119 miles less to Social Circle than to Augusta from Cincinnati?

A. The question of the difference in distance from Cincinnati to the two points cut practically no figure in fixing the rates or the reasonableness or the unreasonableness of the rates as fixed. What I meant by the 6th consideration to be taken into account by railroads in making rates, to wit: "the length of haul over the different railroads, and especially over those which originate or deliver the traffic," was that a large percentage of the expense of moving traffic was in the length of time consumed and the expense incurred in switching and loading and unloading cars on traffic carried for a short haul, and railway companies would and should take into consideration, especially those which originate or deliver the traffic, the length of haul that a certain rate per ton per mile would pay them to cover the expenses referred to, in addition to the mere transportation of the traffic.

(Answer objected to as not responsive to the question.)

Q. 48. Are we to understand that in arriving at the conclusion that the rates from Cincinnati to these two points was reasonable, the difference in the length of haul "cut no figure" with you in arriving at that determination?

A. In my judgment the rate from Cincinnati to Atlanta is reasonable, also that the rate from Atlanta to Social Circle is reasonable, and that it is not unreasonable or unjust to Social Circle to make the rates based on Atlanta plus to rate from Atlanta to Social Circle.

(Answer objected to as not responsive to the question.)

332 Q. 49. I repeat my last interrogatory.

(Defendants' counsel objects to the last question, because he submits that cross-question 42 and the answer thereto are substantially the same as the question last asked, which is fairly answered in answer to cross-question 42.)

A. The question of the difference in the distance from Cincinnati to the two points named cut no material figure in the reasonableness or unreasonableness of rates to the two points named; in fact, in coming to my conclusion as to the reasonableness or unreasonableness in the rate, I did not take into consideration the distance.

Q. 50. In arriving at the conclusion that the rate to Augusta was reasonable and the rate to Social Circle was reasonable, did you take into account any circumstance or condition except those of the different kinds of competition of which you testify?

A. In determining the reasonableness of the rate to Augusta I took into account all of the elements of competition at Augusta—what the transportation was worth to the Augusta merchant or manufacturer, in view of the competitive forces which enabled him to secure transportation facilities through other sources. I also took into account the fact that the rate, as fixed to Augusta, would enable the lines from Cincinnati to Augusta to realize a profit on the transportation of the traffic carried, and in order to share in the traffic it was necessary to fix reasonable rates, that is, reasonable as compared with the conditions and competition of other lines centering in Augusta; in other words, that so long as the rates of transportation from Cincinnati to Augusta paid a reasonable profit and were reasonably fairly adjusted, so as to enable the lines from Cincinnati to Augusta to share in the carrying of such traffic, that the rates from Cincinnati to Augusta were reasonable. In arriving at my conclusion as to the reasonableness of the rate — Cincinnati to Social Circle, I took into account the elements of competition to the nearest competing point, adding to such rates the local rates fixed by the Georgia commission, which I believe to be reasonable. I do not consider the rates to Social Circle unreasonable or unjust, so long as the basis of adjusting rates to Social Circle which
333 apply to the rates now in effect is adhered to. Of course if all of the elements of competition could be removed, and a mileage basis adopted in fixing rates of transportation, and the question of competition entirely eliminated, or practically so, the rates from Cincinnati to Augusta and Social Circle should be nearly the same, perhaps higher to Augusta than Social Circle; and any other basis of adjusting rates to Social Circle, under such conditions, would be unreasonable and unjust to Social Circle.

(So much of the foregoing answer as is not responsive to the question is objected to.)

Q. 51. You have said that the present rate to Augusta is fairly remunerative, and also that it yields a reasonable profit. At what rate per ton per mile can first-class freight from Cincinnati to Augusta, in less than car-load lots be hauled and yield a reasonable profit to the carrier?

A. That depends very much on the volume of the business. If the entire tonnage of the railroads between Cincinnati and Augusta and between all other points consisted of first-class freights or its equivalent, and that were true of the general business of the railroads of this section, I should say that a rate of 1½ cents per ton per mile on such freight, in less than car-load quantities, would be reasonable, and would furnish sufficient earnings to justify the transportation companies in carrying the traffic at that rate.

Q. 52. Would that rate per ton per mile be a fairly remunera-

tive one, taking the tonnage of the traffic as it exists today between Cincinnati and Augusta?

A. It would not entail a loss upon the carriers to transport the traffic at that rate, but in view of the fact that such a large proportion of the traffic carried between Cincinnati and Augusta is of the lower classes which pays less rates, the railroads cannot afford to carry first-class traffic in less than car-loads from Cincinnati to Augusta at 1½ cents per ton per mile.

Q. 53. Are we to understand that the first-class traffic in less than car-load lots is assessed at a higher rate in order to make up for the unremunerativeness in the transportation of other classes?

334 A. Not at all. The estimate that 1½ cents per ton per mile on first-class traffic in less than car-loads would be remunerative was based upon the assumption or statement that this would only be so if the entire tonnage which the railroads now carry consisted of such traffic. It would not matter whether the traffic was first, second, third or fourth class, or even of the very lowest class; if it paid in less than car-loads 1½ cents per ton per mile and would not materially interfere with the volume of traffic moved, the transportation companies could afford to fix their rates upon that basis. Such a condition, however, cannot arise. There are certain classes of traffic which will not stand that rate, which could not be moved at all if a rate approximating that were put into effect, and if such low-class traffic were required to pay that rate, it would not be moved at all, and in that way an advance upon the higher classes would be necessary in order to make up the losses sustained by reason of the loss of the lower classes of freight. The railroads have so much money to earn. Many of them have not been able to earn what they ought to earn in order to avoid financial embarrassments and difficulties. They must, therefore, fix such rates on all classes of freight as will enable them to earn a profit on each, abandoning only such traffic as fails to make a profit in order to avoid the raising of rates on other classes.

Q. 54. I understood your answer to be that a rate of 1½ cents per ton per mile was fairly remunerative, and I supposed that you intended to say that all classes of freight might average that sum. Are we to understand what you say in that way?

A. No, sir; I intended to say, if I did not, that if all of the business would equal first class, or would pay 1½ cents per ton per mile, that such traffic would be remunerative, but I did not intend to convey the impression, nor do I think I said anything calculated to convey the impression, that the average business of the railroads between Cincinnati and Augusta, or for that matter between any point, paid a rate of 1½ cents per ton per mile.

Q. 55. What in your opinion ought to be the average of all classes of freight on the tonnage as it now exists between Cincinnati and Augusta?

335 A. There would be a difference; the tonnage of the Cincinnati, New Orleans & Texas Pacific Co. is larger than the tonnage of the Western & Atlantic, and the tonnage of the W. &

A. railroad is larger than the tonnage of the Georgia railroad, therefore, while a cent per ton per mile might be a fairly remunerative rate to the Cincinnati Southern, it would not be as remunerative to the Western & Atlantic, and from what I know of the Georgia road, if its tonnage were carried at that rate the road could not live; I mean financially. To make it clear I give it as my opinion that one cent per ton per mile on all traffic over the Cincinnati Southern would be fairly remunerative, while over the Western & Atlantic about 1.10 per ton per mile would answer. Whereas, the Georgia road could not get along very well with less than 1.55 or 1.60. This is on the basis of the tonnage now carried by the three roads named.

Q. 56. What you have said in regard to the rate per ton per mile to Augusta would be true also of Atlanta, with the exception that on account of the circumstances of the Georgia road, the rate per ton per mile to Atlanta might reasonably be a trifle less than to Augusta, might it not?

A. When I referred to the rate per ton per mile on traffic as at present carried by the three roads in question, I did not merely intend to confine it to business between Augusta and Cincinnati. The rate per ton per mile referred to had reference to the entire tonnage carried by these roads without respect to the point of origin or point of destination. What I mean to say, and now desire to confirm, is that the Cincinnati Southern road can afford to carry all of the traffic at present carried by that road at one cent per ton per mile and realize a fair profit, and that the Western & Atlantic road can carry all the tonnage that it is carrying now at an average rate of 1.10 per ton per mile, at a fair profit, and that it matters not whether the traffic carried stops in Atlanta, Augusta, Charleston or any other point, that if these roads could secure the same volume of tonnage that they are carrying now, carried the same number of miles, they could afford to do so at the rate per ton per mile named for each, at a fair profit to themselves.

336 Q. 57. You have in your testimony several times used the words "similar circumstances and conditions," and have several times adopted that language as found in the questions which were asked you. Do you give to those words a wider meaning than that which relates to the service performed by the carriers?

A. I do. I think the words apply to the conditions and circumstances which control the purchase and sale of the property to be transported; the conditions and circumstances which enable the seller or purchaser to avail himself or themselves of more than one line of transportation, to the conditions which enable the carrier to fix his own rates of transportation, or those which force the carrier to accept the rates of transportation fixed by others. In my judgment, all of the elements of competition between carriers; competition between product and product and market and market, are covered by the words "circumstances and conditions," which vary according to the varying circumstances and conditions which exist at the different points seeking transportation facilities.

Q. 58. You do not then subscribe to the doctrine that these words

"circumstances and conditions" apply only to the carriage of the goods, and not to the business motive of either the carrier or the shipper, do you?

A. They, in my judgment, do not apply to the carriage of the goods. They apply to the conditions given in the preceding answer, and more fully (set forth) in my answer to question 48, of the direct examination.

Redirect examination:

Q. 1. In cross-question 19, and your answer thereto, mention is made of complaints as to all points in the territory covered by the Southern Railway & Steamship Association, including Atlanta, Macon, Rome and other competing points in that territory, and in your answer to cross-question 20 you speak of those complaints having been made by shippers, and that several of the carriers have reached the conclusion that the rates from Cincinnati and other Western cities ought to be reduced. Please explain the nature of those complaints [as to whether they were to the effect that said rates were unreasonably high in and of themselves, or as compared with rates from or to other points, and if so what points].

337

(Answer objected to as leading.)

(Defendants' counsel withdraws so much of the question as is in brackets.)

A. The complaints are based mainly upon the idea that the rates from Cincinnati, Louisville, Indianapolis, Chicago, St. Louis, Evansville and other western cities to Atlanta, Augusta, Macon, Rome, etc., are too high as compared with the rates from Baltimore, New York, Philadelphia, Boston and interior eastern cities to Atlanta, Augusta, Macon, Rome and other competing points in the territory of the Southern Railway & Steamship Association.

Q. 2. Have you ever heard of any complaints from shippers that the rates from Cincinnati to Atlanta were unreasonably high in and of themselves, unless the complaint of the James & Mayer Buggy Co., filed before the Interstate Commerce Commission, can be regarded as such a complaint?

A. I have no recollection of such complaint; every complaint that I have any recollection of proceeded on the idea and argument that the rates from Cincinnati and other cities in the West to this territory, *i. e.*, Atlanta, Augusta, etc., were too high as compared with the rates from Baltimore, Philadelphia, New York, Boston, and other eastern points to the same points, *i. e.*, Atlanta, Augusta, Macon, etc.

Q. 3. In your answer to cross-question 56 you state that the words "circumstances and conditions" do not, in your judgment, apply to the carriage of the goods. Am I to understand from that answer that you do not consider that the cost of carriage, or the value of

carriage enter into those circumstances and conditions? Please explain your answer more fully.

(Question objected to as leading.)

A. Taken in connection with that portion of the act to regulate commerce, reading as follows, to wit: "It shall be unlawful for any common carrier subject to the provisions of this act to charge
338 or receive any greater compensation in the aggregate for the transportation of passengers or of the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance."

I should say that the cost or value of carriage does not enter into the circumstances and conditions "made over the same line in the same direction" except as to the increased cost of moving and handling traffic to, from and at intermediate points as compared with the cost of handling like traffic at competing or terminal points. The principle factors which, in my judgment, creates substantially dissimilar circumstances and conditions are those set forth in my answer to questions 57 of the cross-examination, and 48 of the direct examination.

Recross-examination:

Q. 1. Prior to November 1, 1890, you were an officer of the Louisville & Nashville R. R. Co., and owed your first duty to that company, did you not?

A. As an official, yes.

Q. 2. And from November 1, 1890, to January 14, 1892, you were out of railroad service, were you not?

A. Yes, practically.

E. B. STAHLMAN.

339 & 340 *Agreement.*

Adopted January 14, 1892.

341 Circular Letter No. 14—Series 1891–'92.

The Southern Railway and Steamship Association.

Agreement.

This agreement, made this 14th day of January, A. D. 1892, by the parties whose signatures are hereto attached, witnesseth that—

Whereas, the establishment and maintenance of tariffs of uniform rates, to prevent unjust discrimination such as necessarily arises from the irregular and fluctuating rates which inevitably attend the separate and independent action of transportation lines, is important for the protection of the public; and

Objects of the association.

Whereas, it is deemed to be to the mutual advantage of the public and the transportation companies, that business in which they have a common interest should be so conducted as to secure a proper correlation of rates, such as will protect the interests of competing markets without unjust discriminations in favor of or against any city or section; and

Whereas, these objects can be attained by the co-operation on the part of the various transportation lines engaged in the traffic of the territory south of the Potomac and Ohio rivers and east of the Mississippi river; and

342 Whereas, such co-operation is absolutely necessary to a strict compliance with the requirements of the act of Congress, entitled "An act to regulate commerce;"

To be attained by co-operation.

Now, therefore, in order to secure such co-operation among the said transportation lines, and to provide means for the prompt adjustment of the differences which may arise between them, by placing the conduct of all the traffic common to two or more companies, under well-defined rules and regulations which will insure the maintenance of rates, it is mutually agreed as follows:

Article first.

SECTION 1. The association herein formed shall continue to be styled The Southern Railway and Steamship Association.

Title of association.

Article second.

Territorial limit for lines which may be included.

SECTION 1. The traffic subject to this agreement shall be (*a*) all business for which two or more of the parties hereto compete, having origin and destination within the territory of this association, that is, south of the Virginias and south of the Ohio river and east of the Mississippi river; and (*b*) all traffic between territory on or north of the southern boundaries of the Virginias and on or north of the Ohio river and west of the Mississippi river, and the territory south of such south boundary of the Virginias and the Ohio river, and east of the Mississippi river, except, that traffic to or from a local point on any line shall be considered local to that line, and so far as that line may be concerned, shall not be subject to this agreement, and further except that traffic between points on the Ohio and Mississippi rivers, or between points on the Ohio and Mississippi rivers and points north of the Ohio and west of the Mississippi river shall not be subject to this agreement.

Traffic covered by this agreement.

Methods of mutual protection to eastern and western lines.

SECTION 2. For the mutual protection of the various interests, and for the purpose of securing the greatest amount of net revenue to all the companies parties to this agreement, it is agreed that what are termed western lines shall protect the revenue derived from transportation by

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what are known as eastern lines, under the rates as fixed by this association, so far as can be done by the exaction of local rates, and that eastern lines shall in like manner protect like revenue of western lines.

Eastern and western territories respectively defined.

SECTION 3. That a line from Buffalo through Salamanca, Pittsburgh, Wheeling and Parkersburg, to Huntington, West Virginia, be made the dividing line between eastern and western lines for the territory hereinafter outlined. That the western lines shall not make joint rates from points east of that line for any points east of a line drawn from Chattanooga through Birmingham, Selma and Montgomery to Pensacola.

SECTION 4. The eastern lines, including the Richmond & Danville railroad via Strasburg or points east of Strasburg, and the East Tennessee, Virginia & Georgia railway via Bristol, shall not make joint rates on traffic from points west of that line (Buffalo, etc.) to any points on or west of a line drawn from Chattanooga through Athens, Augusta and Macon, to Live Oak, Florida.

SECTION 5. The traffic from Buffalo through Salamanca, Pittsburgh, Wheeling, and Parkersburg to Huntington, West Virginia, and points on that line, to and east of Chattanooga, Calera and Selma, shall be carried by either the eastern or western lines only at such rates as may be agreed upon.

Co-operation between eastern and western lines promised.

SECTION 6. It is understood that the eastern and western lines will co-operate in the enforcement of the third and fourth sections of this second article.

Article third.

Time and place for holding conventions.

SECTION 1. The representatives of the several companies, members of the association, shall meet in convention annually on the second Wednesday in June, in the city of New York, or at such other place as may be mutually agreed upon, and special meetings may be called at any time as hereinafter provided.

Article fourth.

Business of conventions.

SECTION 1. The business to be transacted in general convention shall be confined to the
344 election of officers, fixing their salaries, the representation of members on the executive board, and the adjustment of such matters as cannot be properly determined by the executive board with the aid of the board of arbitration. Each company, a member of the association, shall have one vote. Two-thirds of the whole vote of the members present shall be required to make the action of the convention binding. Companies members of the association may be represented in the convention by the president, vice-president, general manager, traffic manager, superintendent or general freight agent, in person or by proxy, provided such proxy presents to the secretary a properly attested power of attorney. In case of more than one nomination being made for any office, the election shall be by ballot.

Article fifth.

Officers of association.

SECTION 1. The following officers shall be elected at the annual meeting, and shall hold their office until the next annual meeting, and thereafter until their successors are elected:

A president, a commissioner, a secretary, and three arbitrators.

SECTION 2. In the event of a vacancy occurring

Vacancy in elective office.

in any elective office, the president may fill the vacancy until a general meeting can be convened to elect a successor, and such meeting shall be called by the president within twenty days after the vacancy occurs.

Article sixth.

Lines represented on the executive board.

SECTION 1. The East Tennessee, Virginia & Georgia railway; Norfolk & Western railroad; Richmond & Danville railroad; Seaboard & Roanoke railroad; Central Railroad of Georgia; Georgia railroad; Western & Atlantic railroad; Wilmington & Weldon railroad; Atlanta & West Point railroad; and Western Railway of Alabama; Savannah, Florida and Western railway; Old Dominion Steamship Company; Ocean Steamship Company; Merchants' & Miners' Transportation Company; Cape Fear and Yadkin Valley railway; Cincinnati, New Orleans & Texas Pacific railway; Illinois Central railroad; Kansas
345 City, Memphis & Birmingham railroad; Louisville, New Orleans & Texas railway; Louisville & Nashville railroad; Mobile & Ohio railroad; Nashville, Chattanooga & St. Louis railway, and Newport News & Mississippi Valley Company, shall each designate a representative, who shall be authorized to represent them in all matters of business with the association or its members. The several representatives so designated, and such other representatives of members of the association as may be designated by the executive board, shall constitute the executive board, of which the commissioner shall be chairman. If any company or line which is entitled to a representative fails to appoint one, or if their representatives be not present at any meeting of the executive board, such company or line shall be represented by the commissioner.

Article seventh.

Meetings of executive board.

SECTION 1. The executive board shall meet at the call of the commissioner, whenever and wherever in his judgment it is necessary, or when any three members of the board request it; but all such calls must state the object of the meeting, and the subjects to be acted upon by the board. All absent members shall be represented by the commissioner, whose duty it shall be to make himself familiar with their views and interests, so that he can represent them properly; and votes

cast by the commissioner for absent members, at any meeting, on any subject stated in the call, shall have the same force and effect in binding such members as if cast by them in person. Other subjects than those mentioned in the call may be considered and acted on in the meeting of the executive board, but the assent of the absent members must be obtained, or a decision of the board of arbitration, before such action becomes binding upon them. The executive board shall have jurisdiction over all matters relating to the traffic covered by this agreement, but shall act only by unanimous consent of all its members. In the event of failure to agree, the questions at issue shall be settled by the board of arbitration as hereinafter provided for.

Commissioner shall represent absent members.

Jurisdiction of executive board.

SECTION 2. The principle of an apportionment of business subject to arbitration, shall be recognized in the operation of the association so far as this can be lawfully done.

346 Article eighth.

SECTION 1. The executive board shall have the right at their discretion to appoint rate committees and other subcommittees, either of their own number or from among the officers and agents of the companies members of the association, and to delegate to such subcommittees jurisdiction over such matters as may be specially committed to their charge. With a view of a proper relative adjustment of all rates, and especially a proper relative adjustment of rates on similar articles from the East and West to common territory, the rate committees shall have sole authority to make all rates and classifications on all traffic covered by this agreement, subject to decision of the commissioner, the executive board or board of arbitration, as hereinafter provided, in case such rate committees cannot agree; but if the rate committees shall fail or omit to make rates on any traffic covered by this agreement, the commissioner shall have authority to make such rates, it being the intention that there shall be properly authenticated tariffs of rates on all such traffic.

Executive board may appoint rate committees and other subcommittees.

Authority of rate committee.

Commissioner authorized to make rates.

SECTION 2. Subcommittees shall only act by unanimous consent, and failing to agree, the questions at issue may, upon demand of any member, be referred to the executive board for action at their next meeting, or the votes of members of the executive board may be taken separately and

Subcommittees shall act only by unanimous consent.

apart by correspondence, and such questions may be submitted direct to the board of arbitration, when so authorized by a majority of the executive board.

Commissioner shall be *ex officio* chairman of all subcommittees and shall represent absent members.

SECTION 3. The commissioner shall be *ex officio* chairman of subcommittees, and as such shall be the medium of communication between the subcommittees and the executive board. Absent members of subcommittees shall be represented by the commissioner, as in case of absent members of the executive board. During the interim between the reference of any matter of difference from a subcommittee to the executive board, and the final determination of such matter, the commissioner, if he deem it a matter requiring prompt action, shall have authority to decide it temporarily, and his decision shall be binding on all parties until reversed by the executive board or by arbitration.

Commissioner shall have authority to decide temporarily questions on which subcommittees fail to agree.

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Article ninth.

Executive board authorized to make rules and regulations.

SECTION 1. The executive board shall have authority to make from time to time such rules and regulations, not inconsistent with this agreement, as may be necessary to secure a systematic conduct of the affairs of the association, and attain the objects for which it is formed.

Article tenth.

Duties of the president.

SECTION 1. The president shall preside over all general meetings of the association, certify to the record of such meetings, and communicate the proceedings to all the members. He shall call a general meeting of the association whenever he is requested to do so by three members of the executive board, or whenever it is in his judgment necessary.

Article eleventh.

Duties of board of arbitration.

SECTION 1. The board of arbitration shall hear and determine all questions which may be submitted to them under this agreement, or by consent of the parties, and the decisions of the said board of arbitration shall be final and conclusive.

Article twelfth.

Duties of secretary.

SECTION 1. The secretary shall make complete and accurate records of the proceedings of all general meetings of the association, the originals of which shall be preserved in the general office of

the association, and copies furnished to each member. He shall also act as secretary to the board of arbitration, to the executive board, and to all committees herein provided for, and preserve similar records of their proceedings, and perform such other duties as may be assigned him by the commissioner.

Article thirteenth.

Duties of commissioner.

SECTION 1. The commissioner shall be the chief executive officer of the association, and as a representative of its members, both severally and jointly, shall act for them in all matters which
348 come within the jurisdiction of the association, in conformity with the requirements of this contract, and the instructions of the executive board and committees herein provided for, but exercising his discretion in all cases which are not provided for either by this agreement or by the executive board and committees acting under its authority and sanction. When directed by the executive board, the commissioner shall also take charge of reports and claims, and appoint such clerks and claim agents as may be necessary, and charge up the expense to the roads interested in the business, on an equitable basis, managing the business for the benefit and at the cost of the companies interested. He shall also have authority to reduce the rates when necessary to meet the competition of lines or roads not parties to this agreement, and he may at the same time make corresponding reductions from other points from which relative rates are made. He shall have such authority over the traffic officers and their subordinates and over the accounting departments of the parties hereto, as may be necessary to enforce the terms of this contract relative to the maintenance of rates, and to require information relating to the traffic to be furnished to him in such form or manner as he may deem necessary. He shall have access, either in person or by deputy, to the books, papers, correspondence, etc., of any of the officers, agents or employees of the parties hereto, that relate to the freight traffic covered by this agreement.

Article fourteenth.

Accounts of traffic to be kept by the commissioner.

SECTION 1. The commissioner shall keep such accounts of the traffic covered by this agreement, and make such reports of the same, as may be directed by the executive board.

Article fifteenth.

Disbursements of funds.

SECTION 1. All disbursements of the funds of the association shall be made by the commissioner, who shall give bond, with security, in such amount as shall be satisfactory to the executive board, that he will duly and properly account for all moneys of the association, or belonging to members thereof, which may in any manner come into his possession or under his con-
349 trol. No payments shall be made except on properly receipted vouchers, which shall be held subject to inspection by the executive board, or such person or persons as may be appointed by them for that purpose.

Article sixteenth.

Deposit to pay fines.

SECTION 1. In order to provide for the prompt payment of any fines that may be assessed against any member of this association for violating its rules, each company shall deposit with the commissioner an amount equivalent to five ($5) dollars for each mile of the road operated by said company under the provisions of this agreement, or in case where a company operates a water line, five ($5) dollars for each mile allowed as a prorating distance in the division of through rates; provided, such amounts shall not exceed in the aggregate the sum of five thousand ($5,000) dollars for any one company; but in all cases when fines are assessed, the commissioner is hereby authorized to draw at sight on the parties against whom such fines are assessed, for the full amount of said fines, and each company, party to this agreement, hereby binds itself to promptly pay such drafts, it being the intent and meaning of this section that the deposit herein provided for shall not be diminished by reason of the payment of any fines that may be assessed against a company making such deposit.

Article seventeenth.

Commissioner to be furnished with copies of manifests.

SECTION 1. The commissioner shall be furnished with copies of all manifests for traffic covered by this agreement, such copies to be forwarded at the time the shipments to which they apertain are made, and shall show the original shipping point and through rates, and also the divisions thereof so far as such divisions are controlled by this agreement, and abstracts of all such manifests

shall be furnished to the commissioner at the expiration of each month; but it is understood that members of the association shall not have access to any of such manifests, or be furnished with the names of consignors or consignees. The tonnage books of every company in the association shall be open at all times to the inspection of the
350 commissioner or such agents as he may from time to time appoint, for the purpose of enabling him to get a complete record of all traffic covered by this agreement.

Article eighteenth.

Copies of rates to be sent to officers or members.

SECTION 1. Copies of all rates that may be from time to time agreed upon, or fixed in the manner provided, shall be furnished promptly to the auditors and other officers of the parties to this contract, and they shall see that the rates are enforced in conformity therewith, and that no variations are made from such rates or manifests, by voucher or otherwise.

Article nineteenth.

All-rail rates.

SECTION 1. That all rail rates to and from the ports of Boston, Providence, New York, Philadelphia and Baltimore, to points within the territory as covered by this agreement, shall be higher than the rates by water or combined water and rail lines by the present differentials, as established by the board of arbitration July 19th, 1889, and subject to the Southern Railway & Steamship Association classification.

Water lines or combined water and rail lines may insure against marine risks.

SECTION 2. Water lines or combined water and rail lines may insure against marine risks by issuing insured bills of lading between the above-named ports and points within the territory covered by this agreement, provided, they give two weeks' written notice to the commissioner, naming the points to which they will issue insured bills of lading.

Cost of marine risk be assumed only by the issue of insured bills of lading.

SECTION 3. No water line or combined water and rail line shall assume the cost of insurance against marine risk in any other manner than herein provided for, viz: by the issue of insured bills of lading. It is however distinctly understood and agreed that no reduction of the established tariff rates, rebates or consideration of any kind, shall be given or offered to influence shippers, or to secure their preference for any road or line.

All-rail differentials shall not be changed except by arbitration.

SECTION 4. The above-named differentials as between all-rail lines and water or combined water and rail lines shall not be changed except by arbitration, which may at any time be called for by any party to this agreement.

351 SECTION 5. The present insurance clause shall remain in force until the business shall have been apportioned, and after such apportionment has been made effective, then the insurance clause as amended by the majority report of the committee on revision shall be substituted therefor.

Article twentieth.

Rates to and from interior eastern points.

SECTION 1. The parties to this agreement who control all-rail lines through Alexandria, Hagerstown, Richmond or Norfolk, agree to protect the water lines or combined water and rail lines upon the basis of the above-named differentials, or such other differentials as may be fixed by arbitration, in making rates between points in the territory covered by this agreement and all interior points in the Northern and Eastern States east of the territorial line named in article second, section 3, of this agreement, unless when and where the combinations of locals through the gateways of Cincinnati, Louisville, Ashland, Hagerstown, Alexandria, Richmond or Norfolk makes a lower rate; it being the intent of this agreement to protect the water or combined water and rail lines to the extent of the differentials named in article nineteenth, or such other differentials as may be fixed by arbitration in the construction of all-rail rates between points in Northern and Eastern States east of the territorial line above mentioned.

SECTION 2. It is agreed that rates made to points reached by lines via Cincinnati or Louisville, not members of this association, may become the rates of all association lines.

SECTION 3. It is also agreed that in cases where a combination of locals to and from interior points, by rail lines, make lower totals than the established water lines port rates, plus differentials, the rates may be by all lines the lowest combination, but shall not be less than such combination.

SECTION 4. In all cases changes of rates made under above provisions shall be made by the rate committees or the commissioner, who shall promptly notify all parties interested.

352 Article twenty-first.

SECTION 1. The executive board shall organize such a system for the rendition of tonnage and revenue reports of the traffic covered by this agreement, as shall enable the commissioner to be at all times fully informed of the movements thereof, and the observance of rates established therefor, in order that he may detect promptly any violation of rates, and keep each company or line informed of the action of the other companies or lines. For these purposes, the executive board at their discretion, may appoint agents to examine the books of the members of the association, and inspectors of the weights and classifications, who shall at all times have access to and be permitted to examine goods. Any losses or damages resulting to initial carrier from the opening of packages by inspectors, shall be prorated on the basis of revenue. The expenses of such agents and inspectors shall be distributed among the members as hereinafter set forth. Tonnage and revenue statements shall be rendered monthly to each member of the association, and also annually on the 30th day of April, in a report to be made by the commissioner at the expiration of each year and distributed to the members at least two weeks before the annual meeting.

Reports of tonnage and revenue to commissioner.

Article twenty-second.

SECTION 1. All measures necessary to carry out the *the* purposes of this agreement shall be taken jointly by the parties hereto; and should any question arise upon which they cannot agree in relation to the terms of this contract, or to any matter arising thereunder, it shall be decided by arbitration as herein provided, it being one of the fundamental principles of this contract that no party shall take separate action in any matter affecting the interest of one or more of the other parties, contrary to the spirit and intent of this contract, and that all differences relating to the establishment, adjustment and maintenance of rates upon the traffic covered by this contract, shall be adjusted by arbitration.

Differences referred to arbitration.

353 Article twenty-third.

SECTION 1. Whenever rates have been fixed by the rate committees, the commissioner, the executive board or by arbitration, there shall be no re-

Reduction of rates forbidden.

duction from such rates without the consent of the commissioner. No member of the association shall reduce such rates, directly or indirectly, by any special rate, rebate or drawback, or by payment of commissions, or by reductions on manifests, or by combinations of local rates, or by rebilling, or by underbilling weights, or by any consideration in the way of free transportation, or in any manner, or by any device whatsoever.

Lines to advance proportions in case of cut rates.

SECTION 2. It is distinctly understood and agreed that the maintenance of rates as established under the rules of the association, is of the very essence of this agreement, and the parties hereto pledge themselves to require all their connections to maintain such rates, and in the event of any company or line, or its connections, not members of the association failing to conform to this obligation, the other parties in interest pledge themselves to increase their proportions of through rates sufficiently to protect the authorized rate whenever required by the commissioner to do so; provided, that in no case shall any company be required to charge more than its published local rates.

Violations to be reported to board of arbitration.

SECTION 3. Whenever the commissioner shall have reason to believe that the rates established under the rules of the association are not being fully maintained, by any line or company, member of this association, it shall be his duty to make a full investigation of the facts in such case, and if in his judgment, there has been any violation of this agreement, on the part of any member or members of this association, which he cannot promptly correct, he shall submit the evidence in such case to the board of arbitration; and if the board of arbitration shall find, after a full hearing of the case, that any member is guilty of violating this agreement, it shall impose such penalties therefor as it may deem proper and necessary to secure the maintenance of the rates of this association. The commissioner shall enforce such penalties, making use if necessary of
354 the fund provided for this purpose. Any surplus over and above the amount that may be awarded by the board of arbitration to indemnify any members for losses sustained, shall be applied to the payment of the expenses of the association.

Board of arbitration to make its rules.

SECTION 4. The board of arbitration shall, from time to time, make or amend rules of procedure for the trial of such cases, and the submission of

arguments in cases referred to it for decision, as it may deem proper.

Article twenty-fourth.

Annual membership fee.

SECTION 1. In order to defray the expenses of the association, there shall be first assessed annually on each member thereof a tax of three hundred ($300) dollars, which shall be applied to paying salaries of general officers, and towards general expenses, such as office rent, printing, etc., and such additional amount may be assessed on members, *pro rata*, according to their gross revenue derived from the traffic covered by this agreement, as may be necessary to meet these and all other expenses of the association.

Article twenty-fifth.

Duration of agreement.

SECTION 1. This contract takes effect the fourteenth day of January, 1892, and shall terminate on the thirty-first day of July, 1892, and the fiscal year of the association shall terminate on the thirtieth day of April, 1892.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC R'Y,
By HENRY FINK, *Vice-pres't.*
ILLINOIS CENTRAL R. R.,
By J. T. HARAHAN, *2d Vice pres't.*
LOUISVILLE, NEW ORLEANS & TEXAS R'W'Y,
By E. W. HOW, *T. M.*
NEWPORT NEWS AND MISS. VALLEY CO. (W. D.),
By E. W. HOW, *T. M.*
LOUISVILLE & NASHVILLE RAILROAD CO.,
By S. R. KNOTT, *1st Vice-pres't.*
355 MOBILE & OHIO R. R. CO.,
By J. C. CLARKE, *Pres't.*
MEMPHIS & CHARLESTON R. R'D CO.,
By HENRY FINK, *Vice-pres't.*
ALABAMA GREAT SOUTHERN R. R'D CO.,
By HENRY FINK, *Vice-pres't.*
GEORGIA PACIFIC R. R.,
By SOL. HAAS, *T. M.*
EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY CO.,
By HENRY FINK, *Vice-pres't.*
OLD DOMINION STEAMSHIP CO.,
By W. L. GUILLAUDEU, *Traffic Manager.*
MERCHANTS' & MINERS' TRANSPORTATION CO.,
By J. C. WHITNEY, *Traffic Manager.*
SEABOARD & ROANOKE R. R. CO.,
By O. V. SMITH, *Traffic Manager.*

NORFOLK & WESTERN RAILROAD CO.,
By CHAS. G. EDDY, *Vice-pres't.*
RICHMOND & DANVILLE R. R. CO., CENTRAL RAILROAD OF GEORGIA, INCLUDING PORT ROYAL & AUGUSTA,
By SOL. HAAS, *T. M.*
THE ATLANTA & WEST POINT R. R. CO. AND WESTERN RAILWAY OF ALABAMA,
By C. H. PHINIZY, *Pres't.*
THE GEORGIA R. R'D,
By C. H. PHINIZY, *Act'g Gen'l Mang'r.*
THE WILMINGTON AND WELDON R. R'D CO.,
By H. WALTERS, *Vice-pres't.*
THE SAVANNAH, FLORIDA & WESTERN R'Y CO.,
By H. S. HAINES, *Vice-pres't.*
CAPE FEAR & YADKIN VALLEY R'Y CO.,
By J. W. FRY, *G. M.*
THE BALTIMORE STEAM PACKET CO.,
By R. L. POOR, *G. F. A.*
356–358 THE OCEAN STEAMSHIP CO. OF SAVANNAH,
By G. M. SORREL, *Manager.*
GEORGIA SOUTHERN & FLORIDA RAILROAD,
By A. C. KNAPP, *Traffic Manager.*
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY AND WESTERN & ATLANTIC RAILROAD,
By J. W. THOMAS, *President.*
KANSAS CITY, MEMPHIS & BIRMINGHAM RAILROAD COMPANY,
By GEO. H. NETTLETON, *President.*
THE BALTIMORE, CHESAPEAKE & RICHMOND STEAMBOAT CO.,
By REUBEN FOSTER, *Vice-pres't.*

359 *Testimony of Alexander S. Erwin, of Athens, Ga.*

Q. 1. State your name, age, residence, and occupation?

A. My name is Alexander S. Erwin, I live at Athens, Georgia, and am a lawyer by profession.

Q. 2. Please state if you were at any time a member of the railroad commission of Georgia, and if so, when your connection with the board commenced and when it ended?

A. I was a member of the railroad commission of Georgia for a term of six years, commencing on the 15th of October, 1885, and ending on October 15, 1891.

Q. 3. Please state generally the nature of the duties of that commission?

A. These duties are set forth in an act entitled An act to provide for the regulations of freight and passenger tariffs in this State, etc., approved October 14, 1879, which I have in my hand. I file as Exhibit No. 1 to my deposition the 19th report of the railroad com-

mission of Georgia, and the laws prescribing the duties of the railroad commission are found on page 40 to 48 inclusive.

Q. 4. Please state whether or not the rates made by said commission while you were in office, from Atlanta to Social Circle in the State of Georgia, were just and reasonable so far as you know or believe?

Counsel for plaintiff objects to question 4, because the answers sought to be elicited thereto would be conclusions of law, and because said question is leading and suggestive.

A. The railroad commission had been in existence six years when I became a member of the board, and the rates had been established before that time. I do not remember now that the commission, while I was a member, acted upon any question involving the rates between the points mentioned, except there was a general reduction along the line of the Georgia railroad in the rates on coal, which, of course, affected Social Circle. There were perhaps other changes in rates made affecting that point, but I do not now recall them. Indeed, I believe the coal rate was modified by agree-
360 ment with the authorities of the road, or at least they acquiesced in the change. The commissioners were required by law to make just and reasonable rates between all points in the State of Georgia, and when any objection was made to a rate already established, either by the railroad company or by the shipper, the commissioners investigated the matter and endeavored to make the rate just and reasonable, if it was not in their judgment already so.

Q. 5. Please look at circular No. 119, of the railroad commission of Georgia, dated Atlanta, August 15, 1888, and mark the same Exhibit No. 2 to your deposition. State whether or not said circular was issued while you were in office, and state what rate was allowed on first-class freight for distances between fifty and fifty-five miles?

A. I have no doubt that this circular was issued by the commission, but I can't recall it just now. The rate fixed in said circular is 30 cents per hundred pounds for fifty miles, and 32 cents for fifty-five miles. I have no doubt that this circular is correct and was issued by the commission as it purports to be. I hereby attach this circular as a part of my deposition as Exhibit No. 2. I was in office at the time this circular was issued.

Q. 6. Please examine the paper here shown you marked Exhibit No. 3 to your deposition, it purporting to be circular No. 110 of the railroad commission of Georgia, dated Atlanta, April 24, 1888. State whether you were in office at that time and whether such circular was issued by the commission to the best of your knowledge and belief?

A. I have examined the circular referred to in the question. It was issued by the commission while I was a member of the board.

Cross-examination:

Q. 1. When in response to question in direct examination with reference to local rates as fixed by the Georgia railroad commission, you refer to such local rates between Atlanta and Social Circle, do you mean to be understood as stating that such local rates have any application whatever to through bills of shipment, say from Cincinnati to Social Circle?

361 A. I do not mean to apply the term local rates to any shipments except those that originate and end in the State of Georgia.

Q. 2. Now, for example, while it is true the Georgia railroad commission cannot regulate freights outside of the State, let us suppose that a shipment of buggies, or any other goods or commodities shipped as freight from Cincinnati, Ohio, to Social Circle, Ga., on through bills of shipment, would the local rates, as fixed by the Georgia railroad commission, apply to such a shipment?

A. I do not understand that the rates fixed by the Georgia railroad commission would apply to a shipment of the kind mentioned.

ALEX. S. ERWIN.

EXHIBIT No. 1.

The following is the law under which the railroad commission was created, being act No. 269, part 1, title 12 of the act and resolutions of the General Assembly of the State of Georgia, 1878–1879:

An act to provide for the regulation of railroad freight and passenger tariffs in this State; to prevent unjust discrimination and extortion in the rates charged for transportation of passengers and freights, and to prohibit railroad companies, corporations, and lessees in this State from charging other than just and reasonable rates, and to punish the same, and prescribe a mode of procedure and rules of evidence in relation thereto; and to appoint commissioners, and to prescribe their powers and duties in relation to the same.

Whereas, it is made the duty of the General Assembly, in article 4, paragraph 2, and section 1 of the constitution, to pass laws, from time to time, to regulate freight and passenger tariffs; to prohibit unjust discrimination on the various railroads of this State, and to prohibit railroads from charging other than just and reasonable rates, and enforce the same by adequate penalties; therefore,

SECTION I. Be it enacted by the General Assembly of Georgia,

362 That there shall be three commissioners, appointed by the governor, with the advice and consent of the Senate, to carry out the provisions of this act, of whom one shall be of experience in the law, and one of experience in the railway business. After the expiration of the terms of the office of the commissioners

first appointed, the term of office of successors shall be six years; but, at the first appointment, one commissioner shall be appointed for two years, one for four years, and one for six years. The salary of each commissioner shall be twenty-five hundred dollars, to be paid from the treasury of the State. Any commissioner may be suspended from office by order of the governor, who shall report the fact of such suspension, and the reasons therefor to the next General Assembly, and if a majority of each branch of the General Assembly declare that said commissioner shall be removed from office, his term of office shall expire. The governor shall have the same power to fill vacancies in the office of commissioner as to fill other vacancies, and if, for any reason, said commissioners are not appointed during the present session of the General Assembly, the governor shall appoint them thereafter, and report to the next Senate, but the time until then shall not be counted as part of the term of office of said commissioners, respectively as herein provided. Said commissioners shall take an oath of office, to be framed by the governor, and shall not, jointly or severally, or in any way, be the holders of any railroad stock or bonds, or be the agent or employee of any railroad company, or have any interest in any way in any railroad, and shall so continue during the term of office; and in case any commissioner becomes disqualified in any way, he shall at once remove the disqualifications or resign, and on failure so to do, he must be suspended from office by the governor, and dealt with as hereinafter provided. In any case of suspension the governor may fill the vacancy until the suspended commissioner is restored or removed.

SEC. II. That said commissioners shall be furnished with an office, necessary furniture and stationery, and may employ a secretary or clerk at a salary of fifteen hundred dollars at the expense of the State. The office of said commissioners shall be kept in
363 Atlanta, and all sums of money authorized to be paid by this act out of the State treasury shall be paid only on the order of the governor; Provided, that the total sum to be expended by said commissioners for office rent, furniture and stationery shall, in no case, exceed the sum of eight hundred ($800) dollars, or so much thereof as may be necessary, per annum.

SEC. III. That from and after the passage of this act, if any railroad corporation, organized or doing business in this State, under any act of incorporation or general law of this State now in force, or which may hereafter be enacted, or any railroad corporation organized, or which may hereafter be organized under the laws of any other State, and doing business in this State, shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its track, or any of its branches thereof, or upon any railroad within this State which it has the right, license, or permission to use, operate or control, the same shall be deemed guilty of extor-

tion, and, upon conviction thereof, shall be dealt with as hereinafter provided.

SEC. IV. That if any railroad corporation as aforesaid shall make any unjust discrimination in its rates or charges of toll or compensation for the transportation of passengers or freights of any description, or for the use and transportation of any railroad car upon its said road, or upon any of the branches thereof, or upon any railroads connected therewith, which it has the right, license or permission to operate, control or use, within this State, the same shall be deemed guilty of having violated the provisions of this act, and, upon conviction thereof, shall be dealt with as hereinafter provided.

SEC. V. That the commissioners appointed, as hereinbefore provided, shall, as provided in the next section of this act, make reasonable and just rates of freight and passenger tariffs, to be observed by all railroad companies doing business in this State on the railroads thereof; shall make reasonable and just rules and regulations, to be observed by all railroad companies doing business in this State, as to charges at any and all points, for the necessary handling
364 and delivering of freights; shall make such just and reasonable rules and regulations as may be necessary for preventing unjust discriminations in the transportation of freight and passengers on the railroads in this State; shall have the power to make just and reasonable joint rates for all connecting railroads doing business in this State, as to all traffic or business passing from one of said roads to another, and to require the location of such depots, and the establishment of such freight and passenger buildings, as the condition of the road, the safety of freight and the public comfort may require; Provided, however, that before applying joint rates to roads that are not under the management and control of one and the same company, the commissioners shall give thirty days' notice to said roads of the joint rate contemplated, and of its division between said roads, and give hearing to roads desiring to object to the same; shall make reasonable and just rates of charges for use of railroad cars carrying any and all kinds of freight and passengers on said railroad, no matter by whom owned or carried; and shall make just and reasonable rules and regulations, to be observed by said railroad companies, on said railroads, to prevent the giving or paying of any rebate or bonus, directly or indirectly, and from misleading or deceiving the public in any manner as to the real rates charged for freight and passengers; Provided, that nothing in this act contained shall be taken as in any manner abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from or goes beyond the boundaries of the State, and on which freight less than local rates on any railroad carrying the same are charged by such railroad, but said railroad companies shall possess the same power and right to charge such rates for carrying such freights as they possessed before the passage of this act; and said commissioners shall have full power by rules and regulations to designate and fix the difference in

rates of freight and passenger transportation, to be allowed for longer and shorter distances on the same or different railroads, and to ascertain what shall be the limits of longer and shorter distances.

SEC. VI. That the said railroad commissioners are hereby authorized and required to make for each of the railroad corpora-
365 tions doing business in this State, as soon as practicable, a schedule of just and reasonable rates of charges for the transportation of passengers and freights and cars on each of said railroads: and said schedule shall, in suits brought against any such railroad corporations wherein is involved the charges of any such railroad corporations for the transportation of any passenger or freight or cars, or unjust discrimination in relation thereto, be deemed and taken in all courts of this State as sufficient evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers and freights and cars upon the railroads; and said commissioners shall, from time to time, and as often as circumstances may require, change and revise said schedules. (When any schedule shall have been made or revised, as aforesaid, it shall be the duty of said commissioners to cause publication thereof to be made for one time in some public newspaper published in the cities of Atlanta, Augusta, Albany, Savannah, Macon, Rome, Athens, Americus and Columbus, in this State, at a rate not to exceed fifty cents per square of usual advertising space when less than a column is occupied, or more than twelve dollars per column when as much space as a column or more is occupied, by inserting said schedule or change of any schedule, so that said newspaper shall not charge for such advertising any rate in excess of that allowed for county legal advertising; and after the same shall be so published, it shall be the duty of all such railroad companies to post at all their respective stations, in a conspicuous place, a copy of said schedule for the protection of the people; Provided, that the schedule thus prepared and published, as aforesaid, for all the railroad companies now organized under the laws of this State, or that may be organized at the time of said publication; Provided, that when any rate or change is made by the commissioners that affects only one road or roads in a particular locality, the insertion need only be made in the paper published in one of the cities named nearest where the change is made (act 27th September, 1883); Provided, that the schedules thus prepared shall not be taken as evidence, as herein provided, until schedules shall have been prepared and published as aforesaid, for all the railroad companies
366 now organized under the laws of this State, or that may be organized at the time of said publication. All such schedules, purporting to be printed and published as aforesaid, shall be received and held in all such suits as *prima facie* the schedules of said commissioners, without further proof than the production of the schedules desired to be used as evidence, with a certificate of the railroad commission that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein

named, and that the same has been duly published as required by law.)

SEC. VII. That it shall be the duty of said commissioners to investigate the books and papers of all the railroad companies doing business in this State, to ascertain if the rules and regulations aforesaid have been complied with, and to make personal visitation of railroad offices, stations, and other places of business for the purpose of examination, and to make rules and regulations concerning such examination, which rules and regulations shall be observed and obeyed as other rules and regulations aforesaid; said commissioners shall also have full power and authority to examine all agents and employees of said railroad companies, and other persons, under oath or otherwise, in order to procure the necessary information to make just and reasonable rates of freight and passenger tariffs, and to ascertain if such rules and regulations are observed or violated, and to make necessary and proper rules and regulations concerning such examinations, and which rules and regulations herein provided for shall be obeyed and enforced as all other rules and regulations provided for in this act.

SEC. VIII. That all contracts and agreements between railroad companies doing business in this State, as to rates of freight and passenger tariffs, shall be submitted to said commissioners for inspection and correction, that it may be seen whether or not they are a violation of law or of the provisions of the constitution, or of this act, or of the rules and regulations of said commissioners; and all arrangements and agreements whatever as to the division of earnings of any kind by competing railroad companies doing
367 business in this State, shall be submitted to said commissioners for inspection and approval, in so far as they affect rules and regulations made by said commissioners to secure to all persons doing business with said companies just and reasonable rates of freight and passenger tariffs; and said commissioners may make such rules and regulations as to such contracts and agreements as may then be deemed necessary and proper, and any such agreement, not approved by such commissioners, or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers, shall be deemed, held and taken to be violations of article 4, section 1, paragraph 4 of the constitution, and shall be illegal and void.

SEC. IX. That if any railroad company doing business in this State, by its agents or employees, shall be guilty of a violation of the rules and regulations provided and prescribed by said commissioners; and if, after due notice of such violation given to the principal officer thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation, as may be directed by the commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offense of not less than one thousand dollars, nor more than five thousand dollars, to be fixed by the presiding judge. An action

for the recovery of such penalty shall lie in any county in the State where such violation has occurred, or wrong has been perpetrated, and shall be in the name of the State of Georgia. The commissioners shall institute such action through the attorney general or solicitor general, whose fees shall be the same as now provided by law.

SEC. X. That if any railroad company doing business in this State shall, in violation of any rule or regulation provided by the commissioners aforesaid, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury in the county where the same was done, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in actions between individuals, except that, in cases of willful violation of law, such railroad companies
368 shall be liable to exemplary damages; provided, that all suits under this act shall be brought within twelve months after the commission of the alleged wrong or injury.

SEC. XI. That in all cases under the provisions of this act the rules of evidence shall be the same as in civil actions, except as hereinbefore otherwise provided. All fines recovered under the provisions of this act shall be paid into the State treasury, to be used for such purposes as the General Assembly may provide. The remedies hereby given the persons injured shall be regarded as cumulative to the remedies now given by law against railroad corporations, and this act shall not be construed as repealing any statute giving such remedies.

SEC. XII. That the terms "railroad corporation," or "railroad company," contained in this act shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this State, and the provisions of this act shall apply to all persons, firms and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this State (street railways excepted), the same as to railroad corporations hereinbefore mentioned.

SEC. XIII. That all railroad companies in this State shall, on demand, issue duplicate freight receipts to shippers, to which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and so far as practicable shall state the freight charges over other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight such agent shall deliver the article shipped upon payment of the rate charged for the class of freights mentioned in the receipt. If any railroad company shall violate this provision of the statute, such railroad company shall incur a penalty to be fixed and collected as provided in section nine of this act.

SEC. XIV. That it shall be the duty of the commissioners herein provided for to make to the governor annual reports of the transactions of their office, and to recommend, from time to time,
369 such legislation as they may deem advisable under the provisions of this act.

SEC. XV. That said railroad commissioners, in making any examination for the purpose of obtaining information pursuant to this act, shall have power to issue subpœnas for the attendance of witnesses, by such rules as they may prescribe. And said witnesses shall receive for such attendance two dollars per day, and five cents per mile, traveled by the nearest practicable route in going to and returning from the place of meeting of said commissioners, to be ordered paid by the governor upon presentation of subpœnas, sworn to by the witnesses, as to the number of days served and miles traveled, before the clerk of said commissioners, who is hereby authorized to administer oaths. In case any person shall willfully fail or refuse to obey such subpœna it shall be the duty of the judge of the superior court of any county, upon application of said commissioners, to issue an attachment for such witness, and compel him to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners, and said court shall have power to punish for contempt, as in other cases of refusal to obey the process and order of such court.

SEC. XVI. That every officer, agent or employee of any railroad company who shall willfully neglect or refuse to make and furnish any report required by the commissioners, as necessary to the purpose of this act, or who shall willfully and unlawfully hinder, delay or obstruct said commissioners, in the discharge of the duties hereby imposed upon them, shall forfeit and pay a sum of not less than one hundred, nor more than five thousand dollars, for each offense, to be recovered in an action of debt in the name of the State.

SEC. XVII. That all laws militating against this act are hereby repealed.

Approved October 14, 1879.

370 *Power to Bring Suit.*

An act to amend section 719 (*i*) of the Code of Georgia of 1882, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the same, That section 719 (*i*) of the Code of Georgia of 1882 be, and the same is, amended by adding thereto the following:

The commissioners shall have the power, in their discretion, to institute suit without notice for any violation of any of said rules

or regulations, whenever, in their opinion, the circumstances authorize it, of which they shall be the sole judges; and after the institution of said suit there shall be no settlement of the same without the consent of the said commissioners, so that said section, when amended, shall read as follows: If any railroad company doing business in this State, by its agents or employees, shall be guilty of a violation of the rules and regulations provided and prescribed by said commissioners, and if, after due notice of such violation given to the principal officer thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation as may be directed by said commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offense of not less than one thousand dollars nor more than five thousand dollars, to be fixed by the presiding judge. An action for the recovery of such penalty shall be in any county in the State where such violation has occurred or wrong has been perpetrated, and shall be in the name of the State of Georgia. The commissioners shall institute such action through the attorney general or solicitor general, or such other attorney-at-law of this State as the said commissioners may appoint, whose fees shall be the same as now provided by law.

The commissioners shall have the power in their discretion to institute suit without notice for any violation of said rules and regulations, whenever, in their opinion, the circumstances authorize it, of which they shall be the sole judges; and after the institution of said suit there shall be no settlement of the same without the consent of the commissioners.

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SEC. 2. Be it enacted, That all laws or parts of laws in conflict herewith are hereby repealed.

Approved October 16, 1891.

Amending Title of Act.

An act to amend an act entitled An act to provide for the regulation of railroads, freight and passenger tariffs in this State; to prevent unjust discrimination and extortion in the rates charged for transportation of passengers and freights, and to prohibit railroad companies, corporations and lessees in this State from charging other than just and reasonable rates, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint commissioners, and to prescribe their powers and duties in relation to the same, approved October 14, 1879.

SECTION 1. Be it enacted by the General Assembly of this State, and it is hereby enacted by the authority of the same, That the caption of the above-recited act be, and the same is, hereby amended as follows, to wit:

After the word tariffs, in the second line, add the following words: "And the location and building of passenger and freight depots," so that the whole caption of said act will read as follows:

"An act to provide for the regulation of railroad freight and passenger tariffs, and the location and building of passenger and freight depots in this State; to prevent unjust discrimination in the rates charged for transportation of passengers and freights, and to prohibit railroad companies, corporations, and lessees in this State from charging other than just and reasonable rates, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint commissioners, and to prescribe their powers and duties in relation to the same."

372 SEC. 2. Be it further enacted, That all laws in conflict with the foregoing be, and the same are, hereby repealed.

Approved August 31, 1891.

Inspection of Railroad Tracks.

An act to give the railroad commission of Georgia authority, upon complaint made, to inspect the railroads of any railroad or any part of any railroad in this State; and if found in an unsafe or dangerous condition, to require the same put and kept in such condition as will render travel over the same safe and expeditious; to provide a penalty for failing to obey the orders of the said commission, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, That from and after the passage of this act, the railroad commission of this State is hereby empowered and required, upon complaint made, to inspect for themselves, or through an agent, the railroads or any railroad or any part of any railroad in this State, and if the same is found in an unsafe or dangerous condition, to require the same put and kept in such condition as will render travel over the same safe and expeditious; Provided, that reasonable time be given the railroad authorities in which to accomplish the work or repairs that may be required or ordered; Provided, that this act shall not limit or affect the liability of railroads in cases of damage to person or property.

SEC. 2. Be it further enacted, That any railroad, failing or refusing to obey the orders of said commission within the time allowed for said work, shall be liable to a penalty of not more than five thousand dollars, to be recovered by a suit brought in the name of the State, in which suit the attorney general or solicitor general shall represent the State, and his fees shall be the same as now provided by law. Suits shall be brought in the county where the wrong or violation occurs.

SEC. 3. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are hereby repealed.

Approved October 17, 1891.

373 *Storage Charges.*

An act to require the railroad commission to fix rates of storage to be charged by railroad companies in this State; to prescribe regulations for charging the same, and to prescribe how suit shall be brought for overcharges, and to fix the measure of recovery, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of Georgia, That from and after the passage of this act, power is hereby conferred on the railroad commission of Georgia, and they are required to fix and prescribe a schedule of maximum rates and charges for storage of freight made and charged by railroad companies doing business in this State, and to fix at what time after the reception of freight at place of destination such charges for storage shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination and residence of consignee, and such other facts as in their judgment should be considered in fixing the same.

SEC. 2. Be it further enacted, That all the provisions of the act creating said railroad commission and acts amendatory thereof, prescribing the procedure of said commission in fixing freight and passenger tariffs and hearing complaints of carriers and shippers, and of altering and amending said tariffs, shall apply to the subject of fixing and amending rates and charges for storage as aforesaid.

SEC. 3. Be it further enacted, That no railroad company shall make or retain, directly or indirectly, any charge for storage or freight greater than that fixed by the commission for each particular storage, nor shall they discriminate directly or indirectly by means of rebate, or any other device in such charges, between persons.

SEC. 4. Be it further enacted, That if any railroad company shall violate the provisions of this act, either by exceeding the rates of storage prescribed, or by discriminating as aforesaid, the person
374 or persons so paying such overcharge, or subjected to such discrimination, shall have the right to sue for the same in any court of this State having jurisdiction of the claim, and shall have all the remedies and be entitled to recover the same penalties and measure of damages as is prescribed in the case of overcharge of freight rates, upon making like demand as is prescribed in such case, and after like failure to pay the same.

SEC. 5. Be it enacted, That all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.

Approved October 17, 1891.

To Regulate Express and Telegraph Companies.

An act to extend the powers of the railroad commissioners so as to give them power and authority to regulate charges by express companies for transportation; to regulate charges of telegraph companies for the transmission of messages by telegraph or charges by persons engaged in the several businesses named herein; to apply the powers given to said commissioners, by law, over railroad companies, to all companies or persons owning, controlling or operating a line or lines of express and telegraph; and make the penalties prescribed against railroads for violating commissioner's rules apply to the companies and persons herein named, whose line or lines is or are, wholly or in part, in this State, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, That from and after the passage of this act, all companies or persons owning, controlling or operating, or that may hereafter own, control or operate a line or lines of express or telegraph, whose line or lines is or are, in whole or in part, in this State, shall be under the control of the railroad commissioners of this State, who shall have full power to regulate the prices to be charged by any company or person or persons owning, controlling or operating any line or lines of express and telegraph, for any service performed by such company, person or persons; and all the powers given to said commissioners over railroads in this State, and all the penalties prescribed against railroad companies or persons operating railroads by existing laws, embraced in sections of the Code of 1882 from section 719 (*a*) to section 719 (*p*), both inclusive, are hereby declared to be of force against corporations, companies, or a person or persons owning, controlling or operating a line or lines of express and telegraph, doing business in this State, whose line or lines is or are, wholly or in part, in this State, so far as said provisions of the code can be made applicable to any corporation, company, person or persons owning, controlling or operating a line or lines of express and telegraph. The said commissioners shall also have power and authority to require said companies to locate agencies at railroad stations.

SEC. 2. Be it further enacted by the authority aforesaid, That the powers of the commissioners to regulate charges by corporations, companies and persons herein referred to shall apply only to charges by express, for transportation from one point to another in this State; and messages sent by telegraph from one point to another in this State.

SEC. 3. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.

Approved Oct. 21, 1891.

(EXHIBIT No. 2.)

Railroad commission of Georgia.

Campbell Wallace, chairman; L. N. Trammell, Alex. S. Erwin, commissioners.

ATLANTA, GA., *August* 15, 1888.

Circular No. 119.

Standard freight tariff.

In accordance with rule No. 2 of the "rules governing the transportation of freight," as amended this date, and as published in circular No. 118, the commissioners' standard tariff is hereby amended as follows, to take effect on the fifteenth day of September, 1888.

376 (EXHIBIT No. 2.)

STANDARD FREIGHT TARIFF--CLASSES.

DISTANCE.	PER 100 POUNDS.											Per barrel.		Per 100 lbs.
	1	2	3	4	5	6	A	B	C	D	E	F	G	H
Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	s cts.	Cts.
5	12	11	10	8	7	6	6	6	3½	3	7	7	21	8
10	16	14	13	10	9	8	8	8	4½	4	9	9	28	10
15	18	16	15	12	11	9	9	9	5	4½	11	10	32	12
20	20	18	16	14	12	10	10	10	5½	5	12	11	35	14
25	22	20	18	16	13	11	11	11	6	5½	13	12	37	16
30	24	21	19	17	14	11	11	11	6	5½	14	12	38	17
35	26	23	21	19	15	12	12	12	6½	6	15	13	41	19
40	27	24	22	20	16	12	12	12	6½	6	16	13	43	20
45	29	26	24	21	17	13	13	13	7	6½	17	14	44	21
50	**30**	**27**	**25**	**22**	**18**	**13**	**13**	**13**	**7**	**6½**	**18**	**14**	**45**	**22**
55	32	29	26	23	19	14	14	14	7½	7	19	15	47	23
60	33	30	27	24	19	14	14	14	7½	7	19	15	49	24
65	35	32	28	25	20	15	15	15	8	7½	20	16	51	25
70	36	33	29	26	20	15	15	15	8	7½	20	16	53	26
75	38	35	30	27	21	16	16	16	8½	8	21	17	54	27
80	39	36	31	28	21	16	16	16	8½	8	21	17	54	28
85	41	37	32	29	22	17	17	17	9	8½	22	18	57	29
90	42	38	33	29	22	17	17	17	9	8½	22	18	59	29
95	44	39	34	30	23	18	18	18	9½	9	23	19	61	30
100	**45**	**40**	**35**	**30**	**23**	**18**	**18**	**18**	**9½**	**9**	**23**	**19**	**63**	**30**
110	48	42	37	31	24	19	19	19	10	9½	24	20	67	31
120	51	44	39	32	25	20	20	20	10½	10	25	21	70	32
130	54	46	41	33	26	21	21	21	11	10½	26	22	73	33
140	57	48	43	34	27	22	22	22	11½	11	27	23	77	34
150	**60**	**50**	**45**	**35**	**28**	**23**	**23**	**23**	**12**	**11½**	**28**	**24**	**81**	**35**
160	62	52	46	36	29	24	24	24	13	12	29	26	84	36
170	64	54	47	37	30	25	25	25	14	13	30	28	87	37
180	66	56	48	38	31	26	26	26	14	13	31	28	91	38
190	68	58	49	39	32	27	27	27	15	14	32	30	95	39
200	**70**	**60**	**50**	**40**	**32**	**27**	**27**	**27**	**15**	**14**	**32**	**30**	**95**	**40**
210	71	62	51	41	33	28	28	28	16	15	33	32	98	41
220	72	64	52	42	33	28	28	28	16	15	33	32	98	42
230	73	66	53	43	34	29	29	29	17	16	34	34	1 01	43
240	74	68	54	44	34	29	29	29	17	16	34	34	1 01	44
250	**75**	**70**	**55**	**45**	**35**	**30**	**30**	**30**	**18**	**17**	**35**	**36**	**1 05**	**45**
260	76	71	56	46	35	30	30	30	18	17	35	36	1 05	46
270	77	71	56	46	36	31	31	31	19	18	36	38	1 08	46
280	78	72	57	47	36	32	32	32	19	18	36	38	1 12	47
290	79	72	57	47	37	32	32	32	20	19	37	40	1 12	47
300	**80**	**73**	**58**	**48**	**38**	**33**	**33**	**33**	**20**	**19**	**38**	**40**	**1 16**	**48**
310	81	73	58	48	38	33	33	33	21	19	38	42	1 16	48
320	82	74	59	49	39	34	34	34	21	20	39	42	1 19	49
330	83	74	59	49	39	34	34	34	22	20	39	44	1 19	49
340	84	74	59	49	39	34	34	34	22	20	39	44	1 19	49
350	**85**	**75**	**60**	**50**	**40**	**35**	**35**	**35**	**23**	**21**	**40**	**46**	**1 22**	**50**
360	85	75	60	50	40	35	35	35	23	21	40	46	1 22	50
370	85	75	60	50	40	35	35	35	23	21	40	46	1 22	50
380	88	76	61	51	41	36	36	36	25	23	41	50	1 25	52
390	88	76	61	51	41	36	36	36	25	23	41	50	1 25	52
400	**88**	**76**	**61**	**51**	**41**	**36**	**36**	**36**	**25**	**23**	**41**	**50**	**1 25**	**52**
410	91	77	62	52	42	37	37	37	26	24	42	52	1 28	54
420	91	77	62	52	42	37	37	37	26	24	42	52	1 28	54
430	91	77	62	52	42	37	37	37	26	24	43	52	1 28	54
440	94	78	63	53	43	38	38	38	27	25	43	54	1 31	56
450	**94**	**78**	**63**	**53**	**43**	**38**	**38**	**38**	**27**	**25**	**43**	**54**	**1 31**	**56**
460	94	78	63	53	43	38	38	38	27	25	42	54	1 31	56

377 (EXHIBIT No. 2.)

STANDARD FREIGHT TARIFF--CLASSES.

DISTANCE.	PER 100 POUNDS.		PER TON.		PER CAR-LOAD.			Per 100 lbs.
	J	K	L	M	N	O	P	R
Miles.	Cts.	Cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	Cts.
5	8	4	35	55	7 00	5 50	4 00	4
10	10	5	50	80	10 00	8 00	5 00	5
15	12	5½	55	85	11 00	9 00	6 00	5½
20	13	6	60	90	12 00	10 00	7 00	6
25	14	6½	65	95	14 00	11 00	8 00	6½
30	15	7	70	1 00	15 00	11 00	8 00	7
35	16	7½	75	1 05	17 00	12 00	9 00	7½
40	17	8	80	1 10	18 00	12 00	9 00	8
45	18	8	85	1 15	19 00	13 00	10 00	8½
50	**19**	**8**	**90**	**1 20**	**20 00**	**13 00**	**10 00**	**9**
55	20	8	95	1 25	21 00	14 00	10 00	9
60	21	9	95	1 30	22 00	14 00	11 00	10
65	22	9	1 00	1 35	23 00	15 00	11 00	10
70	22	9	1 00	1 40	24 00	15 00	11 00	11
75	23	9½	1 05	1 45	25 00	16 00	12 00	11
80	23	9½	1 10	1 50	26 00	16 00	12 00	12
85	24	9½	1 15	1 55	27 00	17 00	13 00	12
90	24	9½	1 15	1 60	28 00	17 00	13 00	13
95	25	10	1 20	1 65	29 00	17 00	14 00	14
100	**25**	**10**	**1 20**	**1 70**	**30 00**	**17 00**	**14 00**	**14**
110	26	10	1 25	1 80	32 00	18 00	14 00	15
120	27	10½	1 30	1 90	34 00	18 00	15 00	16
130	28	10½	1 35	2 00	36 00	19 00	16 00	17
140	29	11	1 40	2 10	38 00	19 00	16 00	18
150	**30**	**11**	**1 50**	**2 20**	**40 00**	**20 00**	**17 00**	**18**
160	31	12	1 60	2 25	41 00	20 00	17 00	19
170	32	12	1 70	2 30	42 00	21 00	18 00	19
180	33	12	1 80	2 35	43 00	21 00	19 00	20
190	34	13	1 90	2 40	44 00	22 00	19 00	20
200	**35**	**13**	**2 00**	**2 45**	**45 00**	**22 00**	**20 00**	**20**
210	36	13	2 10	2 50	46 00	23 00	20 00	21
220	37	14	2 20	2 55	47 00	23 00	21 00	21
230	38	14	2 30	2 65	48 00	23 00	21 00	21
240	39	14	2 40	2 65	49 00	24 00	22 00	22
250	**40**	**15**	**2 50**	**2 75**	**50 00**	**24 00**	**22 00**	**22**
260	41	15	2 60	2 75	51 00	24 00	22 00	22
270	42	15	2 70	2 85	52 00	25 00	23 00	22
280	43	16	2 80	2 85	53 00	25 00	23 00	23
290	44	16	2 90	2 95	54 00	25 00	24 00	23
300	**45**	**16**	**3 00**	**2 95**	**55 00**	**26 00**	**24 00**	**23**
310	46	17	3 10	3 05	56 00	26 00	24 00	23
320	47	17	3 20	3 05	57 00	26 00	24 00	24
330	48	17	3 30	3 15	58 00	27 00	25 00	24
340	49	17	3 40	3 15	59 00	27 00	25 00	24
350	**50**	**17**	**3 50**	**3 28**	**60 00**	**27 00**	**25 00**	**24**
360	51	17	3 50	3 28	60 00	27 00	25 00	24
370	52	17	3 50	3 28	60 00	27 00	25 00	24
380	53	18	3 60	3 41	63 00	29 00	27 00	26
390	54	18	3 60	3 41	63 00	29 00	27 00	26
400	**55**	**18**	**3 60**	**3 41**	**63 00**	**29 00**	**27 00**	**26**
410	56	19	3 70	3 54	66 00	31 00	29 00	28
420	57	19	3 70	3 54	66 00	31 00	29 00	28
430	58	19	3 70	3 54	66 00	31 00	29 00	28
440	59	20	3 80	3 67	69 00	33 00	31 00	30
450	**59**	**20**	**3 80**	**3 67**	**69 00**	**33 00**	**31 00**	**30**
460	60	20	3 80	3 67	69 00	33 00	31 00	30

By order of the board.
A. C. BRISCOE, *Secretary.*

CAMPBELL WALLACE, *Chairman.*

35—729

378 (EXHIBIT No. 3.)

Railroad commission of Georgia.

Campbell Wallace, chairman; L. N. Trammell, Alex. S. Erwin, commissioners; A. C. Briscoe, secretary.

ATLANTA, GA., *April* 24, 1888.

Circular No. 110.

Amendment to freight rule 6.

Rule No. six (6) of the "Rules governing the transportation of freight," as contained in circular No. 100, is hereby amended so as to read as follows:

Rule No. 6. (Freight.)

Regulations concerning freight rates.—The freight rates prescribed by the commission as maximum rates which shall not be transcended by the railroads. They may carry, however, at less than the prescribed rates, provided, that if they carry for less for one person, they shall for the like service carry for the same lessened rate for all persons except as mentioned hereafter; and if they adopt less freight rates from one station, they shall make a reduction of the same per cent. at all stations along the line of road, so as to make no unjust discrimination as against any person or locality.

But when, from any point in this State, there are competing lines, one or more not subject to the jurisdiction of the commission, then any line or lines which are so subject may, at such competing point or other points injuriously affected by such competition, make rates below the standard tariff, to meet such competition, without making a corresponding reduction along the line of the road: Provided, that before taking effect, the proposed change in rates shall be submitted to and approved by the commission and published as required by law in section VI of the act approved October, 1879.

This order to take effect May 15th, 1888.

By order of the board.

CAMPBELL WALLACE, *Chairman.*

A. C. BRISCOE, *Secretary.*

379 *Testimony of Virgil Powers, of Macon, Ga.*

Q. 1. State your name, age, residence and occupation.

A. Virgil Powers; 72 years old; residence, Macon, Ga.; occupation, railroad commissioner of Georgia.

Q. 2. Please file as exhibits, No. one and two to your deposition, local freight tariff now in effect on the Georgia R. R., showing rates from Augusta to local stations, and local freight tariff now in effect on said railroad, showing rates from Atlanta to local stations.

(Counsel for plaintiff objects to the introduction of the exhibits named, because the same are irrelevant.)

A. I file the exhibits as requ-sted.

Q. 3. Please state whether the rates as shown on said exhibits have been authorized or made by the Georgia railroad commissioners.

A. They are made in accordance with the railroad commission.

Q. 4. Please state whether said rates, in your opinion, are just and reasonable, or unjust and unreasonable.

A. The rates as made by the Georgia railroad commissioners are supposed to be just and reasonable.

Q. 5. In making or authorizing the railroads in the State of Georgia to make rates, is any regard paid to the existence of competition, at particular points; I mean in reference to rates between competitive points and rates to intermediate stations where no competition exists?

A. Yes, some attention is paid to that where two lines run between points, one line being much longer than the other. The long line does make the short-line rates to meet the competition, without reducing the intermediate points on the long line.

Cross-examination:

Q. 1. What would be the effect of any rate fixed or to be fixed by the Georgia railroad commission on an interstate shipment on through bills?

A. The same effect would apply to through shipments as to local. The long would be authorized to meet the short-line
380 rates to the competitive points. But the railroad commission of Georgia have no control of interstate rates.

Q. 2. Is that the theory upon which rates are fixed by the Georgia railroad commission?

A. Yes, sir.

Q. 3. Now, let us suppose a shipment of buggies is made from Cincinnati to Social Circle, Ga., on through bill, the rate of the railroads being $1.07 per hundred pounds from Cincinnati to Atlanta, and the same from Cincinnati to Augusta, would there be any authority by any rate fixed by the Georgia railroad commission for the charge of $1.37 on such a shipment from Cincinnati to Social Circle?

A. The authority would be to add the local rate to the through rate from Cincinnati to Atlanta.

Q. 4. How would this be if such shipment should be made, say, to Marietta, Ga.; what rate would regulate it?

A. So far as the railroad commission of Georgia —, they would add their local rate to the through rate from the Georgia line to Marietta. The through rates are usually made to stations on the W. & A. railroads by adding the local rates to the Chattanooga rates, or the Atlanta rates, but the commission, as before said, have no control of these through rates.

Q. 5. Does not the application of this system of rates tend to discriminate against the interior and intermediate cities and towns, not the termini of through lines?

A. It makes the rates higher to the intermediate or interior towns than to the termini, or competitive points; and to that extent discriminates.

Redirect:

Q. 1. If the effect of allowing higher rates to intermediate local stations than to competitive stations is to discriminate in favor of the competitive against the local stations, is such discrimination in your opinion just or unjust?

A. It depends entirely upon the difference in the rate made. Some cases it may be made very discriminative and unjust, but if only a moderate difference of rate is charged, I do not con-
381 sider it would be unjust, because it does cost the railroad more to do local business than through business to competitive points.

Q. 2. In those cases alluded in your examination-in-chief, where the railroad commission of Georgia has authorized certain railroads in this State to charge more for the shorter distance than for the longer distance, are the differences in rates in those cases such as in your opinion to be discriminative or unjust?

A. So far as I know, rates that have been authorized by the R. R. commission of Georgia are just and reasonable. There may be some cases that may be unjust by oversight.

(The exhibits referred to in answer to original question No. 2 are the same as Exhibits No. 1 and No. 2 to the deposition of J. W. Green, which exhibits are hereinafter printed.)

VIRGIL POWERS.

Testimony of W. W. McAfee, of Anniston, Ala.

Q. 1. What is your name, occupation and age, and residence?

A. W. W. McAfee; contractor; 57 years of age; Anniston, Alabama.

Q. 2. Where did you reside and what was your employment before you were grown?

A. Forsyth county, Georgia. I was employed in a store and the manufacturing of tobacco; also worked on a farm.

Q. 3. How does the locality of the store and manufactory you refer to compare in distance to Augusta, Ga., with the distance from Augusta, Ga., to Atlanta?

A. I think from that location it was 180 miles to Augusta.

Q. 4. Do you recollect the time when goods were waggoned from Augusta to the store or manufactory where you were employed, and what was the rate that it cost the owners per 100 pounds to have such hauling done? If so, please state it.

A. I do recollect it. My father paid, when merchandising, $2.00 per 100 pounds from Augusta to the store.

382 Q. 5. In your present business does it, or not, come in your way to purchase and use wagons and teams and to employ men to work them?

A. Yes, sir; I purchase teams and employ drivers in my present business.

Q. 6. Have you any recollection as to the cost of horses and mules and the hire of laborers, such as teamsters, during the period before you were grown, above alluded to, and do such things cost more or less now than they did at that time?

A. I have some recollection as to the cost of horses, not of mules. The same quality of horse that we had then, or the best quality—the same quality now would cost fifty per cent. more than they did then. Labor at that time could be obtained at fifty cents per day. It is worth $1.00 now.

Q. 7. What would you say as to how the cost of procuring transportation to be done by wagon at this time would compare with the expense of the same at the former period you name, and what would be in your opinion a fair percentage of such difference, more or less?

A. I would say that it would be worth 33 per cent. more now than it was then, according to the labor and the advance in the price of stock.

(Counsel for plaintiff objects to all the questions and answers herein because the same are irrelevant. And for the reasons of this objection does not desire to make any cross-examination of the witness.)

W. W. McAFEE.

383 *Testimony of Charles Haydon, of Louisville, Ky.*

Int. No. 1. Please state your name, age residence, and occupation.

Ans. to Int. 1. Charles Haydon; fifty-three years of age; resides in Louisville, Kentucky; occupation, assistant comptroller of the Louisville & Nashville Railroad Company.

Int. No. 2. State what connection, if any, the Louisville & Nashville Railroad Company has with the Georgia railroad.

Ans. to Int. 2. The Louisville & Nashville Railroad Company and the Central Railroad & Banking Company of Georgia are the assignees of the lessee of the Georgia railroad.

Int. No. 3. State whether or not it is any part of your duties to keep an account of the earnings and expenses of said Georgia railroad lease.

Ans. to Int. 3. The agents appointed by the Louisville & Nashville Railroad Company and the Central Railroad & Banking Company of Georgia operate the Georgia railroad, and furnish to the comptroller of the Louisville & Nashville Railroad Company a statement each month showing the gross receipts, operating expenses, and the net earnings under the lease, and from these monthly statements entries are made on the books of the comptroller of the Louisville & Nashville Railroad Company, crediting the Georgia railroad lease with one-half of the net earnings, and charging said account with one-half the rent, and at the end of each fiscal year the profit or loss under said lease is closed into Louisville & Nashville railroad income account.

Int. No. 4. Please file as Exhibit No. 1 to your deposition a correct statement showing said earnings and expenses from April 1, 1881, to June 30, 1891.

Ans. to Int. 4. I file as Exhibit No. 1 to my deposition a correct statement showing the total earnings and expenses of said lease from April 1st, 1881, to June 30, 1891.

CHARLES HAYDON.

384 (EXHIBIT 1.)

Earnings and Expenses of the Georgia Railroad Lease from April 1, 1881, to June 30, 1891.

Years.	Earnings.	Expenses.	Profit.
1881–'82	$1,427,006 64	$993,894 68	$433,111 96
1882–'83	1,471,165 84	955,888 17	515,277 67
1883–'84	1,438,929 07	894,770 85	544,158 22
1884–'85	1,378,753 08	877,351 85	501,401 23
1885–'86	1,400,086 97	889,716 69	510,370 28
1886–'87	1,422,501 41	933,460 55	489,040 86
1887–'88	1,572,019 31	978,925 73	593,093 58
1888–'89 (15 mos.).....	1,906,733 27	1,328,159 68	578,573 59
1889–'90	1,744,811 64	1,200,815 48	543,996 16
1890–'91	1,951,896 94	1,247,563 63	704,333 31
Total	$15,713,904 17	$10,300,547 31	$5,413,356 86

Correct.

CHAS. HAYDON,
Ass't Comptroller.

Louisville, Ky., February 25, 1892.

385 *Testimony of C. S. Sikes, of Augusta, Ga.*

Q. 1. Please state your name, age, residence and occupation.

A. Name, C. S. Sikes; twenty-five years old; residence, Augusta, Ga.; traveling auditor Georgia Railroad Company.

Q. 2. Please look at the printed statement here shown you, dated Augusta, Ga., January 22, 1892, and purporting to show the relationship between the through and local freight business of the Georgia Railroad Company for the fiscal year ending June 30, 1891, and say by whom said statement was prepared, under whose supervision it was prepared, and whether said statement is or is not correct, and make it Exhibit No. 1 to your deposition.

(Counsel for plaintiff objects because the answers sought to be elicited would be irrelevant.)

A. It was prepared by myself from the books of the company, under the supervision of Carlton Hillyer, auditor. The statement is correct to the best of my belief and knowledge.

Q. 3. State whether or not the figures contained in said statement were taken by you from the books of said company.

A. They were.

Cross-examination:

Q. 1. How long have you been in your present position?

A. About two years.

Q. 2. What is the character of your duties?

A. My business is inspecting agencies and whatever else may be assigned to me from time to time by the auditor.

Q. 3. What experience in railroad business did you have, if any, before your present employment?

A. I have had eight years' experience before my present employment—six years I mean—in various departments connected with the auditing department of the Georgia railroad.

Q. 4. What experience have you had in your present position that enables you to know the condition and extent of the freight business of the Georgia railroad?

A. For the last two years I have gotten up the annual re-
386 port to the lessees under the direction of Mr. Hillyer, of the Georgia railroad, and also have made up the annual reports to the Interstate Commerce Commission.

Q. 5. Is not your knowledge of the freight business of your road derived mainly from the knowledge of others connected with the freight service of that road?

A. No, sir; I have a pretty general idea of how the business is carried on.

Q. 6. Have you any control, either subordinate or otherwise, over the freight business?

A. I don't know that I have any control.

Q. 7. Do you know anything of your own knowledge about the classification of freights from Cincinnati, Ohio, to Social Circle, Ga.?

A. Well, I have a general idea of what the classification is, having had previous experience in the examination of way bills previous to the time of my present position.

Q. 8. Do you know the distance in miles from Cincinnati to Atlanta, Ga.?

A. No, sir; I do not.

Q. 9. Do you know the distance in miles from Cincinnati, O., to Augusta, Ga.?

A. No, sir.

Q. 10. Do you know the distance from Cincinnati, O., to Social Circle, Ga.?

A. No, sir.

Q. 11. Do you know what the rate of freight, first class, from Cincinnati, O., to Augusta, Ga., is, over the lines of road involved in this suit?

A. No, sir; I don't remember; I suppose I could get the information from the printed tariff. It is a very difficult thing to remember all these matters.

Q. 12. Now let us take for example the shipment of a lot of buggies from Cincinnati, O., to Social Circle, Ga., what would be the difference in the rate of freight as between that shipment and a

shipment of like character of the same kind of goods to Augusta, Ga.?

387 A. I don't know.

Q. 13. Do you know anything of a shipment of buggies by the James & Mayer Buggy Company, of Cincinnati, O., to Social Circle?

A. I don't know of such a shipment—that particular shipment.

Q. 14. Do you know when it was made?

A. I do not.

Q. 15. You have been interrogated concerning a tabulated statement of the condition of business of the Georgia railroad for the fiscal year ended June 30, 1891; what do you know of the condition of the freight business of that road for the fiscal year ended June 30, 1890?

A. From the annual report for the fiscal year ended June 30, 1890, the gross freight earnings were one million, two hundred and two thousand, two hundred and sixty-six dollars. That amount includes the earnings from express and mails, etc.

Q. 16. What portion of that sum represents through business for that year?

A. I don't know.

C. S. SIKES.

GEORGIA RAILROAD COMPANY.

AUGUSTA, GA., *January* 22, 1892.

Statement prepared by C. S. Sikes, traveling auditor, under the supervision of Carlton Hillyer, auditor, and with the advisement of E. R. Dorsey, general freight agent, showing the relationship between the through and local freight business of the Georgia Railroad Company for the fiscal year ending June 30th, 1891.

LOCAL BUSINESS.	
Westward freight from Augusta and points east to local stations on Georgia railroad	$218,548 82
Eastward freight from local stations on Georgia railroad to Augusta and points east	236,803 87
Eastward freight from roads west to local stations on Georgia railroad	91,920 19
Westward freight from local stations on Georgia railroad to roads west	48,868 68
Freight from station to station on Georgia railroad	233,631 58
Total local business	$829,773 14
Less local through freight to and from Atlanta, Athens, Washington, Milledgeville and Macon, which enjoys through rates	79,967 00
Local tariff freights	$749,806 14
THROUGH BUSINESS.	
Westward freight from Augusta and points east to connecting roads west	$79,947 17
Eastward freight from connecting roads west to Augusta and points east	371,557 12
Total through business	$451,504 29
Add local through freight as mentioned above	79,967 00
Through tariff freight	$531,471 29
Total freights	$1,281,277 43

389 The above freights are exclusive of mail, express, and miscellaneous earnings and are distributed according to classes as follows:

Classes.	Local tariff freights.			Through tariff freights.			Total freights.			Revenue which would have accrued if local tonnage had been hauled at through rates.	Difference or loss which would have been suffered by Georgia railroad had local tonnage been hauled at through rates.
	Ton mileage.	Revenue.	Average rate per ton per mile.	Ton mileage.	Revenue.	Average rate per ton per mile.	Ton mileage.	Revenue.	Average rate per ton per mile.		
J. Cotton	3,072,196	$186,972	.06-09	2,847,068	$29,510	.01-04	5,919,264	$216,482	.03-66	$31,950	$155,022
K. Fertilizers	10,296,143	117,225	.01-14	7,854,456	50,553	.00-64	18,150,599	167,778	.00-92	65,895	51,330
N. Live stock	491,732	12,889	.02-62	663,186	8,529	.01-29	1,154,918	21,418	.01-85	6,343	6,546
L. Coal	397,656	5,015	.01-26	9,020,116	80,347	.00-89	9,417,772	85,362	.00-91	3,539	1,476
1. Merchandise	458,700	43,714	.09-53	309,551	11,782	.03-81	768,251	55,496	.07-22	17,476	26,238
2. "	134,696	10,871	.08-07	266,648	8,928	.03-35	401,344	19,799	.04-93	4,512	6,359
3. "	239,553	15,337	.06-40	290,360	9,039	.03-11	529,913	24,376	.04-60	7,450	7,887
4. "	625,627	35,487	.05-67	339,132	9,514	.02-81	964,759	45,001	.04-66	17,580	17,907
5. "	370,663	16,010	.04-32	614,320	10,888	.01-77	984,983	26,898	.02-73	6,560	9,450
6. "	2,284,432	51,037	.02-23	3,345,630	35,948	.01-07	5,630,062	86,985	.01-55	24,443	26,594
A. Ties and bagging, etc.	423,895	8,352	.01-97	504,005	4,304	.00-85	927,900	12,656	.01-36	3,603	4,749
B. Bacon, bulk meats, etc.	740,153	15,476	.02.09	7,190,459	69,396	.00-97	7,930,612	84,872	.01-07	7,179	8,297
C. Flour, etc.	1,624,968	29,608	.01-82	4,342,247	37,228	.00-86	5,967,215	66,836	.01-12	13,974	15,634
D. Grain, hay, etc.	2,137,429	38,268	.01-79	12,165,463	96,098	.00-79	14,302,892	134,366	.00-94	16,885	21,383
E. Ale, beer, etc.	10,256	364	.03-55	209,841	2,792	.01-33	220,097	3,156	.01-43	136	228
F. Flour in barrels, etc.	98,148	1,784	.01-82	3,639,321	31,269	.00-86	3,737,469	33,053	.00-88	844	940
G. Cotton seed, etc.	773,417	21,061	.02-72	110,687	2,773	.02-51	884,104	23,834	.02-70	19,412	1,649
H. Whiskey, etc.	52,391	1,326	.02-53	421,428	9,754	.02-31	473,819	11,080	.02-34	1,210	116
M. O. P. R. Stone, etc.	9,073,672	139,010	.01-53	2,521,372	22,819	.00-91	11,595,044	161,829	.01-40	82,570	56,440
Total	33,305,727	$749,806	.02-25	56,655,290	$531,471	.00-94	89,961,017	$1,281,277	.01-42	$331,561	$418,245

390 *Testimony of Carlton Hillyer, of Augusta, Ga.*

Q. 1. State your name, age, residence and occupation.

A. Name, Carlton Hillyer; age, forty-seven; residence, Augusta, Ga.; occupation, auditor of the Georgia Railroad Company.

Q. 2. How long have you occupied that position?

A. Since 1870, twenty-two years.

Q. 3. Explain briefly and in a general way the nature of your duties as auditor, and especially what connection you have with the through and local freight business of your company, and what means you have of knowing the relationship which exists between the through and local business of that company.

A. I have charge of all the accounts of the company, including the traffic, both freight and passengers, also the expenditures of the company and the accounts relating to the finances. In my office the traffic statistics are kept, both the freight statistics and the passenger statistics. The tonnage of all freights and the revenue on same are kept by classes, that is, each class is kept separately so as to show its ton mileage and its revenue. The local and through revenue appear in their proper places upon the books, showing the freight from and to each station and connecting road. These books are, of course, scrutinized and used by me in the course of business.

Q. 4. Please examine the printed statement dated Augusta, Ga., January 22, 1892, and which has been filed as Exhibit No. 1 to the deposition of C. S. Sikes in this case, and state under whose supervision said statement was prepared; state whether you gave said statement any examination or comparison, and if so, whether it is, or is not, correct?

(Counsel for plaintiff objects to the answers sought to be elicited by this question because the same would be irrelevant.)

A. Said statement was prepared under my supervision. I have given it careful examination and comparison. It is correct to the best of my knowledge and belief.

Q. 5. Please state, as near as you can approximate it, the
391 number and size of the books in your office from which the facts contained in said statement were obtained.

A. Most of the items were obtained from two large books containing about 300 pages each. The pages are about fifteen inches wide, that is in the direction in which the binding runs, and about thirty inches in the direction perpendicular to the binding. These books, of course, derive their results and figures from numerous subsidiary books, about fifteen.

Q. 6. What experience has Mr. C. S. Sikes as a book-keeper or accountant, and what qualifications, if any, has he for preparing such a statement, as the one above referred to?

(Counsel for plaintiff here objects to any testimony by the witness as to the correctness of Exhibit No. 1, because the same is secondary evidence.)

A. He has had experience in every branch of the work in my office; has had occasion either by filling various subordinate positions himself, or by taking charge of certain desks during the absence of the person having charge of same; he has had special experience in the scrutiny and examination of way bills of freight. I consider him an accomplished accountant, who understands bookkeeping by double entry, as well as the processes necessary in preparing statistics from books and records.

Q. 7. As I understand said statement, it shows the total tons of freight moved one mile, the total amount of revenue derived therefrom, the average rate realized per ton per mile. It shows the local tariff freights, the through tariff freights and total freights. It shows the revenue which would have accrued if local tonnage had been hauled at through rates; and it shows the difference or loss which would have been suffered by the Georgia railroad had local tonnage been hauled at through rates. I understand as the result of the statement that if all the local freights had been hauled at through rates, the amount of revenue which the company did receive under the rates which were charged would have been reduced $418,245 in the year ending June 30, 1891. Do I understand the result of said statement correct? If not, please explain it.

392 (Plaintiff's counsel objects to this question as leading and irrelevant.)

A. Yes, sir; such would be the result and the loss to the Georgia railroad would be $418,245 for the period named, namely, the fiscal year ended June 30, 1891, according to the figures shown in this statement.

Q. 8. State what roads and how many miles of road are represented in said statement?

A. The Georgia railroad and branches, including what was formerly called the Macon & Augusta railroad, are included in this statement, and the said statement covers in all 307 miles of road.

Q. 9. State the gross earnings, the expenses and net earnings of the roads represented by said statement for each year for the last ten years or for such period as you may have the data before you to make a statement from?

(Plaintiff's counsel here objects to any general statement of the business done for ten years or for any other period which statement would be based on what the books of the Georgia railroad would show if produced. Because such statement would be incompetent, such books not being produced.)

A. For the ten years and three months ending June 30, 1891, the gross earnings were fourteen million, eight hundred and eighty-one thousand, seven hundred and thirty-three dollars ninety-seven cents. For the same period the expenses were nine million, nine hundred and twenty-nine thousand, seven hundred and four dollars and seventy-seven cents; the net earnings for the same period were four million nine hundred and fifty-two thousand, twenty-nine dollars and twenty cents.

Q. 10. From what source did you obtain the figures given in your last answer?

A. From the printed copies of each and every annual report for the respective years mentioned. The annual reports were made up from the books and records of the company.

Q. 11. How do the gross earnings for the period which has elapsed since June 30, 1891, correspond with similar periods during the ten years preceding that date?

393 A. They are not far from the average for that period in past years.

Q. 12. What is the cost of the roads, including their terminals, represented by the statement filed as Exhibit No. 1 to Mr. Sikes' deposition?

A. The total amount which our books show as charged up to the cost of the road and its equipment is five million, four hundred and thirty thousand dollars.

Q. 13. Is the construction account of your company still open; if not when was it closed?

A. The construction account of the company was closed many years since. I do not now remember the exact year. It was closed prior to the last ten years.

Q. 14. By whom is the Georgia railroad now operated? In what capacity do they operate it? What are the terms under which they operate it and *final* (file a) statement showing the profit or loss realized by them from its operation since it has been in their charge?

A. The road is operated by the Louisville & Nashville Railroad Company and the Central Railroad & Banking Company, which latter company is operating through the Richmond & Danville R. R. Company. Under the terms of the lease by which these companies operate the road, the said companies pay to the Georgia Railroad & Banking Company the sum of six hundred thousand dollars per annum. During the period of the first ten years and three months, ending June 30, 1891, after receiving the net earnings and also certain dividends, etc., from subsidiary roads, and after paying to the Georgia Railroad & Banking Company the rental due for above period, the said lessee owners suffered a loss from the roads' operations of three hundred and sixty-five thousand, eight hundred dollars and sixty cents. Besides the above loss the lessee owners did not receive all the net income in cash, but a portion of said net income was expended as follows: For extending the Georgia railroad across the Oconee river at Athens, one hundred and thirty-one thousand, seven hundred and thirty-seven dollars and fifty-nine cents; for advances made to Walton railroad, three thousand,

394 three hundred and thirty-three dollars and thirty-four cents; for advances made to the Gainesville, Jefferson & Southern railroad, two hundred and thirty-five thousand, seven hundred and seventy-one dollars and sixty-three cents, making a total thus expended of three hundred and seventy thousand, eight hundred and forty-two dollars and fifty-six cents, which amount added to the excess of rental over net income, shows a total amount advanced by

the lessee owners in excess of cash received for the first ten years and three months, the sum of seven hundred and thirty-six thousand, six hundred and forty-three dollars and sixteen cents.

Q. 15. Please state the amount of revenue accruing to the Georgia Railroad Company on shipments to Augusta proper, from June 1, 1890, to May 31, 1891, from Cairo, Ill., Cincinnati, Ohio, Columbus, Ky., East St. Louis, Ill., Evansville, Ind., Henderson, Ky., Louisville, Ky., and Memphis, Tenn., including not only shipments from those points, but shipments worked through those points.

(Counsel for plaintiffs objects to the answers sought to be elicited by this question, because the same would be irrelevant, and because the witness testifies from memoranda not submitted, and not from the books of original entry of said company.)

A. The value of the said business to the Georgia railroad to Augusta proper was one hundred and twenty-three thousand, five hundred and twenty-four dollars and sixteen cents.

Q. 16. State, as near as you can approximate it, the amount of the net revenue annually derived from traffic over that part of the Georgia railroad which lies between Atlanta and Social Circle, assuming, for the purposes of this question, that the Georgia railroad extended only from Atlanta to Social Circle?

A. It might be estimated at one hundred and fourteen thousand dollars for the net revenue.

Q. 17. What is the distance from Atlanta to Social Circle?

A. Fifty-two miles.

Q. 18. Are there any railroads except the Georgia railroad, or any navigable rivers or canals at Social Circle?

A. There are no navigable rivers or canals at Social Circle,
395 and no railroad lines except those controlled by the Georgia railroad.

Q. 19. Explain how the rate from Cincinnati to Social Circle on first-class freight is made up.

A. The rate from Cincinnati to Social Circle is a combination of through and local rates, namely, a through rate of $1.07 to Atlanta and a local rate of 30 cents from Atlanta to Social Circle, making a total of $1.37 per hundred pounds.

Q. 20. Does or does not the Georgia railroad compete for business from Cincinnati to Atlanta when the business is destined to stop at Atlanta?

A. The Georgia railroad does compete for business from Cincinnati to Atlanta in cases where the freight stops at Atlanta.

Q. 21. By stopping at Atlanta, I meant freight which was intended to stop at Atlanta permanently and there be used or consumed. Do I understand you that the Georgia railroad competes for any such freight as that?

A. We do in some cases.

Q. 22. Explain how the Georgia road does compete for the kind of business mentioned in my last question.

A. Freight from Cincinnati to Atlanta might be shipped via Baltimore and other eastern ports, but as Atlanta is further from the

South Atlantic ports than Augusta, the competition is not so great as for freights from Cincinnati to Augusta.

Q. 23. What voice if any has the Georgia railroad in fixing the rate which is jointly charged by the Cincinnati, New Orleans & Texas Pacific railroad and the Western & Atlantic railroad on freight shipped from Cincinnati destined to be consumed in Atlanta?

A. Our road has a voice in the fixing of the said rates only in so far as they might have a bearing upon such freights as we might be able to ship from Cincinnati to Atlanta through the South Atlantic ports. In my position as auditor, however, I am not familiar with the custom which is used by the general freight agents and others in the fixing of rates.

Q. 24. How are the local rates on the Georgia railroad established?

396 A. The local rates on the Georgia railroad are fixed by our general freight agent, subject, of course, to the rulings of the railroad commission of Georgia.

Q. 25. State whether in the transportation of freight between Atlanta and Social Circle, it remains all the time in the State of Georgia or passes through some other State.

A. Freight transported from Atlanta to Social Circle remains always in the State of Georgia and does not pass through any other State.

Q. 26. After the Interstate Commerce Commission delivered its opinion in the case of James & Mayer Buggy Company against The C., N. O. & T. P. *et al.*, state whether any circular was issued to connecting lines by the Georgia railroad, and if so, file it as Exhibit No. 2 to your deposition.

A. On July 3d, 1891, Colonel E. R. Dorsey, general freight agent, issued such a circular, a copy of which I file as Exhibit No. B in my deposition.

Q. 27. I notice that Athens, Gainesville, Milledgeville and Augusta are excepted from the operation of said circular. What is the difference between the status of those places and Social Circle?

A. Although the said stations are some of them sometimes called local stations, they are so situated that we are obliged at the said stations to meet competition, and therefore the said stations enjoy through rates, and their business should not form a part of a total, undertaking to show the amount of local tariff business.

Q. 28. Question 15 was objected to because among other things you testified from a memoranda not submitted; please file as Exhibit No. 1 to your deposition the memorandum from which you testified.

A. I file the said paper as Exhibit No. A.

Q. 29. When freight is received at Cincinnati by the C., N. O. & T. P. R. R., destined for Social Circle, I suppose that railway issues a bill of lading. If so, please file a sample of such bill of lading and mark it Exhibit C.

A. Yes, sir; in such a case the said railroad issues a bill
397 of lading, and I file the same herewith; that is a sample of it, marked Exhibit C.

Q. 30. Where freight is shipped from Cincinnati, via Atlanta, to Social Circle what rate does the Georgia railroad collect on first-class freight from Atlanta to Social Circle?

A. It collects 30 cents per hundred pounds.

Q. 31. State whether that rate is greater or less than the Georgia railroad charges to merchants and other shippers living at Atlanta for shipping similar freights from Atlanta to Social Circle.

A. The said rates is the same in both cases.

Q. 32. State whether the said rate is an open or secret rate and whether it is charged partially to some or impartially to all.

A. Yes, sir; it is charged impartially to all. It is an open rate and I know of no cases in which it is departed from.

Q. 33. State whether or not buggies, carriages and other similar vehicles are shipped to Augusta from Baltimore and other eastern cities.

A. Such freight is shipped from Baltimore and other eastern cities to Augusta.

Q. 34. How much does the Georgia railroad get as its proportion of the through rate of $1.07 from Cincinnati to Augusta?

A. On first-class freight from Cincinnati to Augusta at $1.07 per hundred the Georgia railroad receives twenty-six and five-tenths per cent. of the said $1.07; such rate is, therefore, twenty-eight cents per hundred pounds, which is equivalent to three and thirty-one one-hundredths cents per ton per mile for the distance carried by the Georgia railroad.

Q. 35. Is 3 and 31 one-hundredths cents per ton per mile greater or less than the average cost per ton per mile for transporting freight over the Georgia railroad?

A. According to the rule laid down by the Interstate Commerce Commission for computing the cost of transporting freight per ton per mile, the above rate is greater than the said cost.

Q. 36. What is the average weight of carriages and buggies, such as were shipped by the James & Mayer Buggy Company?

398 A. I am not very familiar with the weights of the vehicles shipped by that firm. I think, however, they would weigh anywhere from 100 pounds to 700 pounds.

Q. 37. Assuming their average weight to be four hundred pounds, how much more would it cost to ship a buggy from Cincinnati, via Atlanta, to Augusta than it would to ship the same buggy from Baltimore to Augusta?

A. To ship such a buggy, weighing four hundred pounds, from Cincinnati to Augusta would cost $4.28. At the prevailing rate of 89 cents per hundred from Baltimore to Augusta, it would cost $3.56, making a difference of 72 cents on the shipment.

Q. 38. Does the Georgia railroad receive any proportion, and if so, what, of the rate charged on freight shipped via the C., N. O. & T. P. railway and the W. & A. R. R. from Cincinnati to Atlanta where such freight is destined to stop at Atlanta?

A. It does not receive any part of said rate.

Q. 39. Please state to what extent the books and other records of the Georgia Railroad Company, from which were compiled the figures contained in the statement filed as Exhibit No. 1 to Mr. Sikes' deposition, and the figures contained in Exhibit No. A in your deposition, and the figures referring to the gross earnings, net earnings and expenses of the Georgia railroad, given by you above—to what extent are said books, etc., used in the daily business of said company? What effect would it have upon the business of said company to bring those books to Atlanta and to detain them here until the information could be compiled from them by a person employed for that purpose; and to bring all the books of original entries relating to those matters, how many books would have to be brought, in your opinion; form the best estimate you can?

A. The said books form a part of the regular structure of our work, and they are used continuously every day by the clerks who make entries in them, and more or less by the officers of the company. To bring them from Augusta would interfere with the clerks in their work and occasion us very great inconvenience and
399 some expense. It would be necessary to bring about fifteen of the books, and it would be expensive to have the figures gone over by an expert.

(Counsel for the defendant offers to permit an examination by any one selected by the counsel for the plaintiff, to be made of all books and papers of the Georgia railroad with reference to any of the matters in regard to which the witness, Mr. Hillyer, or the previous witness, Mr. Sikes, have in their depositions given condensed statements or results, and will furnish fare from Atlanta to Augusta and return for the transportation of such a person.)

Cross-examination:

Q. 1. By what authority are rates for your road and for through connecting lines of road made and fixed? I refer to rates to be charged for the transportation of freight on through bills of lading.

A. The said rates are fixed by authority of the Southern Railway & Steamship Association, of which our company is a member.

Q. 2. In circular No. 106, attached to your direct answers as Exhibit B, and issued July 3, 1891, by the Georgia Railroad Company, Athens, Gainesville, Washington, Milledgeville, Augusta or points beyond are excepted. Now, what was the object of making exceptions in favor of these particular cities and places?

A. I am not sure that I know what object controlled the excepting of those cities. The objects which control such matters are complicated, and vary with the necessity of business.

Q. 3. Is not Social Circle a less distant point from Cincinnati, Ohio, than any of the places named in said circular as excepted from its operations?

A. Yes, sir; Social Circle is nearer by rail to Cincinnati than to any of the said places thus mentioned in the said circular.

Q. 4. What would probably be the effect of freight discrimination

as in favor of these particular places named in the circular mentioned, and as against other cities and places not excepted from its operation in the application of the rules governing freight
400 business to the cities and places named in said circular and to cities and places connected with your road not named therein?

A. If I understand the question aright, the said stations can receive through bills of lading without detriment to the service because they are so situated in regard to competition as to enjoy through rates, although they are sometimes geographically called local stations.

Q. 5. Then has not this system practically the effect of destroying small towns not so fortunately situated as to be within the exceptions of the rules claimed to be necessary.

A. Discriminations in favor of competitive points favorably located does not necessarily destroy the smaller and less favorably located towns in view of the fact that the various individual patrons at the said local towns are treated alike. Besides this, the cost of transportation is not a sufficiently large element in the cost of articles, to entirely control the question of their use.

Q. 6. Does the Georgia railroad commission allow your railroad to make such charges as have been made in this case?

A. I am not aware that we have violated any rule of the commission of Georgia in the charges made on freight involved in this case.

Q. 7. Have not complaints been made by the Georgia railroad commission to your road against similar charges, and is it not true that your road is under notice now from said commission that such charges will not be permitted?

A. From my own knowledge as auditor, I am not familiar with any such complaint coming to us in the course of business.

Q. 8. How do you ascertain the difference to your road between through and local rate of four hundred and eighteen thousand two hundred and forty-five dollars for the period about which you were testifying?

A. It is derived by applying, as shown on the face of the statement, the rate on through tonnage to the number of ton miles of local tonnage shown on the statement. That is to say, we would suffer such a loss if we were compelled to carry our local business at through rates.

Q. 9. Has the Georgia Railroad Company, since the 20th
401 day of July, 1891, ceased and desisted from making any greater charge in the aggregate on buggies, carriages, and other freight of the first class carried in less than car-loads from Cincinnati to Social Circle than charged on such freight from Cincinnati to Augusta?

A. I cannot say that we have in all cases ceased and desisted.

CARLTON HILLYER.

EXHIBIT "A."

Statement showing the revenue accruing to the Georgia Railroad Company on shipments from points named and worked through said points to Augusta proper from June 1st, 1890, to May 31st, 1891.

From—	Total revenue.	Percentage of Ga. R. R.	Ga. R. R. revenue.
Cairo, Ill	$40,844 97	24.4	$9,966 17
Cincinnati, O.....	101,237 66	26.5	26,827 98
Columbus, Ky.....	45,039 49	24.4	10,989 64
East St. Louis, Ill...	76,041 21	24.4	18,554 06
Evansville, Ind.....	80,387 10	26.5	21,302 58
Henderson, Ky.....	2,747 07	24.4	670 29
Louisville, K.....	77,587 73	26.5	20,560 75
Memphis, Tenn.....	53,089 45	27.6	14,652 69
			$123,524 16

Correct.

E. R. DORSEY, *G. F. A.*

Augusta, Ga., Dec. 5th, 1891.

402 EXHIBIT "B."

GEORGIA RAILROAD COMPANY,
OFFICE GENERAL FREIGHT AGENT,
AUGUSTA, GA., *July* 3, 1891.

Circular No. 106, new series.

To connections.

DEAR SIR: Lately we have had some complications arising from connecting lines and their connections issuing through bills of lading quoting rates to our local stations, and, to avoid such complications in the future, we earnestly request that hereafter, in issuing bills of lading to our local stations, no rates be inserted east of Atlanta; this, of course, does not apply to business to Athens, Gainesville, Washington, Milledgeville, Augusta or points beyond.

Please issue instructions to your agents that this rule will be effective at once, and advise me if you will comply with this request.

Yours truly,

E. R. DORSEY,
General Freight Agent.

File No. 30, new series.

(Here follows freight contract marked pp. 403 & 404.)

405 *Testimony of J. W. Green, of Augusta, Ga.*

Q. 1. State your name, age, residence and occupation.

A. John W. Green; age, 57 years; residence, Augusta, Ga.; occupation, general manager of the Georgia railroad and president of the lessee board of commissioners.

Q. 2. How long have you been connected with the management of the Georgia railroad?

A. Since July 1, 1881.

Q. 3. State how that road has been managed and conducted during that time; whether it has been managed carefully or carelessly; economically or extravagantly; honestly or dishonestly; skillfully or unskillfully.

A. It has been carefully, economically and honestly managed. My best efforts have been exerted to manage it skillfully.

Q. 4. What is the cost of the Georgia railroad and equipments, including its branches and what was formerly known as the Macon & Augusta railroad; and how many miles of road are represented in that cost?

A. The cost of the road as shown by our books is five million four hundred and thirty thousand dollars, representing three hundred and seven miles, exclusive of about fifty-nine miles of track in sidings and yards.

Q. 5. What would it cost at this day to duplicate the Georgia railroad and branches, including what was formerly known as the Macon & Augusta railroad, including equipments and terminals?

A. I do not think it could be duplicated for less than twenty-five thousand dollars per mile, including its terminals and equipment. This would amount to seven million six hundred and seventy-five thousand dollars.

Q. 6. Please file as Exhibit No. 1 to your deposition, local freight tariff No. 15, Georgia Railroad Company, taking effect January 1, 1891, purporting to show rates from Augusta to local stations, and state whether or not it is still in force.

A. I file said Exhibit No. 1, local freight tariff, showing rates from Augusta to local stations, which is still in force.

406 Q. 7. Please file as Exhibit No. 2 to your deposition local freight tariff No. 15, Georgia railroad, taking effect January 1, 1891, purporting to show rates from Atlanta to local stations, and state whether or not it is still in force.

A. I file said Exhibit No. 2, local freight tariff, showing rates from Atlanta to local stations, which is still in force.

(Counsel for plaintiff objects to questions numbered 6 and 7 and the answers thereto, because the same are irrelevant.)

Q. 8. When was the charter of the Georgia railroad passed, and what rates was the company authorized to charge under that charter?

A. The charter of the Georgia railroad was passed December 21, 1833. The company was authorized to charge, under the charter,

50 cents per 100 pounds on heavy articles, and 10 cents per cubic foot on articles of measurement, for every 100 miles.

(Counsel for plaintiff objects to question numbered 8 and the answers thereto, because the same are irrelevant.)

Q. 9. State the cubic contents of averaged-sized crates containing carriages, buggies and trotting wagons shipped over the Georgia railroad, and at the charter rate of 5 cts. per cubic foot for 52 miles, what would the freight on such a crate amount to from Atlanta to Social Circle?

A. Cubic contents of such crates are 68¾ cubic feet, and at 5 cts. per cubic foot this freight would amount to three dollars forty-three and three-quarter cents.

Q. 10. What is the average weight of crated carriages, buggies, and trotting wagons, and at the present first-class rate of 30 cts. per hundred pounds what would the freight amount to on an average buggy from Atlanta to Social Circle?

A. The average weight of buggies is about 350 lbs., and at the rate of 30 cents per 100 lbs., the freight would amount to $1.05.

Q. 11. State whether the freight rates charged by railroads in the territory south of the Potomac and Ohio rivers and east of the Mississippi river have increased or decreased during the last 20 years.

A. The freight rates charged by the railroads in the territory named have been diminished during the last twenty years.

Q. 12. Are you acquainted with Mr. Virgil Powers, one of
407 the railroad commissioners of the State of Georgia, and state how long he has been connected with the traffic business in the territory referred to in my last question?

A. Yes, I know Mr. Virgil Powers. He was for a number of years anterior to 1875 the superintendent of the South Western railroad of Georgia. In 1875 he was elected commissioner of the Southern Railway and Steamship Association. He held that position until succeeded by Colonel Talcott, a few years ago. A year or two ago he was appointed a member of the railroad commission of Georgia, which position he now holds.

(Counsel for plaintiff objects to all testimony in these depositions referring to charters, statements, accounts and books, because the originals of such charters, statements, accounts and books are the highest and best evidence, and because the same are not produced.)

(Counsel for the defendant offered to allow any expert selected by counsel for complainant to examine any of the books or papers of the Georgia railroad referring to the matters in regard to which this witness has been examined, and to furnish a pass from Atlanta to Augusta and return for such expert.)

Cross-examination:

Q. 1. Your statement regarding local rates on the Georgia railroad has no reference to freight charges on interstate shipments on through bills, does it?

A. The tariffs filed show simply the local rates.

Q. 2. To illustrate further: A lot of buggies is shipped from Cincinnati, let us say to Atlanta, which is one of the termini of the Georgia railroad at the rate (first-class freight in less than car-load lots) of $1.07 per hundred pounds; another shipment of buggies is made from Cincinnati to Augusta, Ga., via Atlanta, over the entire line of the Georgia railroad at precisely the same rate of $1.07 per hundred pounds; now have the rates fixed by the Georgia State commission for transportation of freights over the railroads in Georgia any application whatever to such shipments?

408 A. The rates prescribed by the Georgia State commission relate to business within the State.

Q. 3. Does the Georgia railroad charge local rates on such shipments? I refer to shipments from Cincinnati to Augusta, Georgia?

A. On a through shipment from Cincinnati to Augusta the Georgia railroad does not receive its full local rate.

Q. 4. If on a through shipment of buggies or other property from Cincinnati to Augusta, Ga., the rate is $1.07 per hundred pounds, and being the same to Atlanta on a like shipment, what part of this rate on the shipment to Augusta would the Georgia railroad receive?

A. It is twenty-eight and four-tenths cents.

Q. 5. Then for a shipment of buggies as in this case, from Atlanta to Social Circle, a distance of 52 miles, the Georgia railroad, under local rates of the Georgia State commission, charges and receives more than for a like shipment over its entire line of 171 miles.

A. The circumstances are unlike. If the rate to Augusta was increased and in so doing the Georgia railroad's proportion was likewise increased, it would result in preventing Cincinnati, and other western cities similarly situated, competing in the Augusta market with eastern cities.

Q. 6. Without any reference to circumstances and conditions, I would thank you to answer whether, as a fact, more is charged and received from Atlanta to Social Circle than from Atlanta to Augusta, as in question numbered 5?

A. We charge and receive 30 cents per hundred pounds on first-class freight from Atlanta to Social Circle.

Q. 7. And on through bills over your entire line 28.4 cents per one hundred pounds?

A. Yes, we charge and receive 28.4 cents.

JNO. W. GREEN.

(Here follows broad-side table marked pp. 409 and 410.)

411 *Testimony of R. P. Marsh, of Augusta, Ga.*

Q. 1. State your name, age, residence and occupation.

A. My name is Ralph P. Marsh; residence, Augusta, Ga.; age, 24 years; occupation, ledger clerk, Georgia railroad.

Q. 2. State whether you were directed by Mr. Hillyer, auditor of the Ga. R. R. Co., to keep an account of the work done on that rail-

road by certain freight trains during the month of March, 1892, and whether you kept such account.

A. Yes, sir.

Q. 3. Did you keep an account of the work done by through freight train No. 6, on said road, and if so, for what days did you keep said account?

A. Yes, sir; for March 22, 23, and also 21st, 1892.

Q. 4. From what point to what point did said train run during those days?

A. From Atlanta to Augusta.

Q. 5. State the cost per ton per mile of gross weight of said train.

A. Two hundred and nine thousandth of a cent (0.209).

Q. 6. What was the cost per ton per mile of miscellaneous freight carried on said train?

A. 0.889 cents.

Q. 7. What was the cost per ton per mile of car-load freight carried upon said train?

A. 0.42 cents.

Q. 8. Did you keep a similar account during the same time of the work done by local freight train No. 8 on said railroad from Atlanta to Buckhead?

A. Yes, sir.

Q. 9. What was the cost per ton per mile of the gross weight of that train?

A. 0.407 cents.

Q. 10. What was the cost per ton per mile of miscellaneous freight carried upon said train?

A. 2.04 cents.

412 Q. 11. What was the cost per ton per mile of car-load freight carried on said train?

A. 0.73 cents.

Q. 12. State whether you kept a similar account of the work done by local freight train No. 7 on said railroad from Buckhead to Atlanta during the same time.

A. Yes, sir.

Q. 13. What was the cost per ton per mile of gross weight of that train?

A. 0.558 cents.

Q. 14. What was the cost per ton per mile of miscellaneous freight carried on said train?

A. 8.1 cents.

Q. 15. What was the cost per ton per mile of car-load freight carried on said train?

A. 0.875 cents.

Q. 16. Please file as Exhibits Nos. 1 and 2 to your depositions, itemized statement showing the data from which you derived the cost per ton per mile of gross weight, and the cost per ton per mile of miscellaneous freight, and the cost per ton per mile of car-load freight on said trains No. 6, 7 and 8 respectively. (See Exhibits 1 and 2 attached to these depositions.)

A. I herewith file exhibits referred to.

Q. 17. Please state the number of miles of roads operated, the ton mileage, the freight revenue, and the average rate per ton per mile of freights carried by the Georgia railroad from 1866 to 1891 inclusive. If you have prepared a statement, showing those facts, please file it as Exhibit No. 3 to your depositions.

A. Yes, sir; I have prepared a statement, which I attach to my depositions herewith. (See Ex. 3.)

Q. 18. From what source of information did you compile Exhibit No. 3? For what years did you have accurate information and for what years, if any, did you have to make an estimate? and as to what matters in the statement did you have to make an estimate?

A. From 1880 to 1891 inclusive, the figures were copied from our printed annual reports; from 1866 to 1879 inclusive, the
413 figures were partially estimated from the number of bales of cotton, tons of fertilizers, bushels of grain and barrels of flour, and the merchandise, classes M. O. P., and the remainder of classes A. B. C., etc., estimated from a comparison of those other articles in the years in which we had the exact record. The exception of the years 1866 and the tons of fertilizers for the years 1867, 1868 and 1869.

Cross-examination:

Counsel for plaintiff objects at the proper time to the admission of Ex. 1, 2 and 3, to all of them because they are not sworn to as proved by the witness. To No. 1 upon the ground that it contains printed matter separated from the calculation and in nowise connected with it by the testimony of the witness, or otherwise, and because said matter contains simply what purports to be conclusions or suggestions either of the witness or other persons, the examination not showing who. To No. 2 upon the ground that it contains printed matter separated from the calculation testified about, said printed matter being in nowise connected with the calculation, it being simply a suggestion or conclusion either of the witness or some other person, the examination not showing who; because the printed matter objected to in Nos. 1 and 2 does not illustrate the calculation, because it was not referred to in the examination, and because it is conclusions either of the witness or some other person.

Plaintiffs' counsel objects to Exhibit No. 3 because it is not the highest evidence of the matters about which it is supposed to furnish proof. Plaintiffs' counsel objects to all three exhibits upon the ground that the books from which the figures upon which the calculation was based, are the highest evidence of the business done by the trains referred to on the days and between the stations. Plaintiffs' counsel object to all of it on the ground that it is immaterial and does not illustrate the case.

Q. 1. Mr. Marsh, how long have you been connected with the Georgia railroad?

A. Over eight years.

Q. 2. What positions have you held during that time?

414 A. Passenger clerk, first; under-charge clerk, freight journal clerk and ledger clerk. Have also temporarily filled other positions.

Q. 3. What knowledge have you of the system of fixing rates of traffic on your road?

A. I understand checking rates and so forth; checking way bills and my ideas of fixing the rates are, that they should be governed by the character of the goods transported.

Q. 4. Do you have anything to do with the fixing of rates?

A. No, sir.

Q. 5. Do you have anything to do with managing the traffic department of the railroad except as a simple clerk?

A. No, sir.

Q. 6. Who directed you to make these estimates?

A. Mr. Hillyer, the auditor.

Q. 7. When did he give you your instructions?

A. During the month of March. I forget the exact day—some time about the middle of the month.

Q. 8. Was it before or after Mr. Hillyer had been examined?

A. It was after Mr. Hillyer had been examined.

Q. 9. Who assisted you in making them?

A. The records.

Q. 10. I did not ask you from where you got your records, but who assisted you?

A. I thought that come in because—the conductors furnished reports of weights of cars, and agents furnished reports of weights of freight, and I also got information from the way bills filed in our office, and I was assisted in additions and calculations by other men in the office—of one other man that I know of.

Q. 11. Can you name the men who assisted you in making this calculation—name the office?

A. Mr. Sikes, he assisted me some. I got rather slight assistance from Mr. Hillyer.

Q. 12. Which Mr. Hillyer?

A. Mr. Carlton Hillyer.

Q. 13. Do I understand you to say that Mr. Hillyer in-

415 structed you to prepare a statement showing the work done, the cost per ton per mile of freight (gross) weights, and the cost per ton per mile of net weights of miscellaneous freight, and net weight of car-load freight, also comparison of cost of these two classes of freight, and that without any additional instruction or suggestion as to how it was to be done, you collected these statistics and made the calculations yourself, except as to the assistance about which you have already testified?

A. I was guided some, mostly, in making up the statement, or a form thereof, by the phraseology of a statement prepared by Mr. R. H. Patterson of work done by various trains, on a Pennsylvania railroad, January 16th, 17th and 18th, 1888.

Q. 14. Why did you not say that you had this assistance of the

Patterson record in reply to the question asked you heretofore about what assistance you had?

A. This was merely a general guide as to how to make up the statement.

Q. 15. Explain the phrase "equivalent tons one mile of miscellaneous freight 8,404."

A. That was the number of tons of freight, of miscellaneous freight, carried one mile.

Q. 16. Why do you use the word "equivalent"?

A. Well, it is a word that expresses what I mean—equivalent to 8,404 tons carried one mile.

Q. 17. You mean to say, then, that the word "equivalent" was intended to designate the idea that one ton was carried one mile; am I correct?

A. Yes, sir; I think that is it. That is just the idea conveyed. Of course there were a large number of tons carried one mile. Per ton per mile is the way we generally express it. I should have added that we find equivalent tons by multiplying the number of miles and dividing by two thousand—multiplying the weight of the freight by the number of miles.

Q. 18. Mr. Marsh, define the word, "equivalent" in the connection in which it is used in this phrase.

A. It means number of tons carried one mile.

Q. 19. What do the figures 8,404 represent?

416 A. The number of tons carried one mile of miscellaneous freight.

Q. 20. How did you arrive at that?

A. We multiplied the weight of the freight by the distance or number of miles and divided by two thousand, pointing off, of course, figures by decimals where necessary.

Q. 21. Have you got the number of pounds that was carried by that train on the day mentioned in this exhibit (Ex. 1)?

A. We have not the number of pounds with us; we just reduced it to tons, as the freight being carried various distances, that would show it more correctly.

Q. 22. Is not through freight carried the same distance?

A. Not always.

Q. 23. Was the freight carried by train on March 21st, 22d and 23d through freight carried from Atlanta to Augusta, or was any portion of it left at intermediate stations?

A. A small percentage of it was left at stations.

Q. 24. Can you tell how many tons?

A. We have the daily average number of tons in cars starting from Atlanta, and the daily average of same tons left in cars arriving at Augusta shown on the statement of Exhibit No. 1.

Q. 25. Have you the weights of freight, miscellaneous and car-loads upon which this calculation was made, with you in court?

A. No, sir; we did not bring the weight in pounds, but we have the weight shown on the statement in tons carried one mile.

Q. 26. Have you the figures upon which the calculation was made by which you receive 8,404 tons, in court with you?

A. No, sir; the statement showed those facts and we deemed that sufficient.

Q. 27. Can you make a calculation now, giving the figures, and show us how you arrived at 8,404?

A. No, sir; the freight was carried various distances——

Q. 28. Just answer the question.

A. The freight was carried various distances, and it would
417 not be easy to give the number of pounds, not having the way bills, of course, with us.

Q. 29. Then you cannot make the calculation for us now?

A. No, sir; having no data and figures to guide me, I cannot do it now.

Q. 30. Explain the phrase "equivalent tons mile of car carrying miscellaneous freight."

A. The number of tons of cars themselves carried one mile.

Q. 31. 27,334 represents what?

A. Represents the weights and tons of cars themselves carried one mile.

Q. 32. Exclusive of freight?

A. Yes, sir.

Q. 33. Explain the phrase "daily average of cars starting from Atlanta March 21, 22 and 23."

A. That is the total number of cars that were carried from Atlanta for those three days, divided by three, so as to make a daily average.

(By Mr. BAXTER:)

Q. 34. Do you mean all of the cars carried out of Atlanta?

A. I mean all of the cars carried by those trains for those three days.

(By Mr. BERNER:)

Q. 35. Can you tell the number of cars that left Atlanta on March 21st?

A. No, sir; we just have the average for the three days.

Q. 36. Can you tell whether this calculation, based on the number of cars for these three days, is a correct average of any other or every other three days in the year?

A. No, sir; it probably would vary at different times; but we took these three days just as they came along, without any premeditation and without knowing what result they would show.

Q. 37. Is there any difference in the cost of running a train of cars composed of say twenty cars, from Atlanta to Augusta, and running one of fifteen cars, say, between same points? If there is any difference, say in what way it comes in.

A. Well, I presume the engine would have to use more coal, the wear and tear of the track may be a little greater, and on a
418 number of these cars which we transport we have to pay mileage.

Q. 38. Is not the loss to which you refer here more than compensated by the additional income of five cars?

A. Yes, sir, I think it is. If we could carry fully loaded trains, we could make more revenue than if we carried partially loaded trains.

Q. 39. Is it true that the cost of running this train No. 6 is the same for every day it is run?

A. Our records show that the cost per train——

Q. 40. I asked you if the cost of running train No. 6 from Atlanta to Augusta is the same each day?

A. Well, how can we answer except by the records of the company?

(Plaintiff's counsel objects to this answer because it is not responsive to the question.)

Q. 41. Is the cost of running through freight trains No. 6, from Atlanta to Augusta the same each day?

A. It can be reasonably assumed that it is nearly the same the year round, allowing for some variation; slight variation for the season of the year.

Q. 42. As a matter of fact will you swear that the cost is the same each day?

A. No, sir; I can't swear that it is absolutely the same; exactly the same.

Q. 43. Then it may be true that the cost of running freight train No. 6 from Atlanta to Augusta on March 21st, 1892, was greater or less than the cost of running the same train between the same points on March 22d and 23d?

A. There may have been a slight difference, but it is not enough to make much difference with the facts as set forth in the statement, Exhibit 1.

Q. 44. I see that you make this calculation on a basis that cost per train mile is one dollar per mile run; explain how you come to adopt that basis.

A. In our report to Interstate Commission of the United States for the year ending June 30, 1891, the number of miles made
419 by freight trains—the total freight-train mileage, is 857,245 miles, and the expenses chargeable to freight traffic $844,593.55, and it is generally assumed on other railroads, I believe, that that is about the cost, though I don't know as that makes much difference in this case. It will throw some light on the subject though, and our own records show the facts.

Q. 45. What is the cost in car-load lots, first-class freight, per 100 pounds—that is, what is the cost of transportation, on Georgia railroad from Augusta to Atlanta?

A. On local freight, we charge 64 cents per 100 pounds from Atlanta to Augusta. From Cincinnati to Augusta we charge 28 cents per 100 pounds from Atlanta to Augusta.

Q. 46. I want to know what is the cost.

A. It cost 3.59 cents on through freight.

Q. 47. Per 100 pounds?

A. Yes, sir.

Q. 48. It cost 3.59 per 100 pounds of first-class freight on through freight from Atlanta?

A. Yes, sir; according to my calculation.

Q. 49. What do you get as freight per 100 pounds, first-class car-load lots from Atlanta to Augusta on through trains?

A. We get 28 cents per 100 pounds on through freight from Cincinnati, which might be taken as an example.

Q. 50. What do you get per 100 pounds on the same class of freight shipped from Atlanta to Augusta on through train No. 6?

A. Sixty-four cents, if local.

Q. 51. Is there any difference between the cost of transportation as to freight shipped from Cincinnati by Atlanta to Augusta and freight shipped from Atlanta to Augusta, the same being carried by freight train No. 6?

A. I don't know that there is if the cars are loaded alike, same weight.

Q. 52. I understand that the cost of transportation on 100 pounds of first-class freight in car-load lots from Atlanta to Augusta is 3.59 cents?

A. According to my calculation. Something else I could add, that on some classes of goods we get a great deal less than first-class rate, say sand and lumber for example, and yet, in
420 this statement, we put the cost per ton per mile of car-load freight at 0.42 cents, and it cost us as much per ton per mile, according to this statement, 3.59 cents per 100 pounds, for hauling sand, lumber, etc.

Q. 53. What is the cost of trans—what is the freight received by the Georgia railroad on shipments of buggies from Cincinnati to Augusta in car-load lots per 100 pounds?

A. It is 21 cents per 100 pounds where not released, third class.

Q. 54. First class?

A. It is not first class, it is third class, which is 21 cents per 100 pounds when not released.

Q. 55. What are the freight charges on buggies in car-load lots from Cincinnati to Augusta?

A. 21 cents per 100 pounds when not released. For the entire distance from Cincinnati to Augusta it is 60 cents per 100 pounds when not released.

Q. 56. What is the rate on buggies in car-load lots from Cincinnati via the Cincinnati Southern and Western & Atlantic railroad to Social Circle, Ga.?

A. When not released 81 cents per 100 pounds.

Q. 57. Are you certain that you are correct about that?

A. They are the figures that are made up and estimated.

Q. 58. How much is it did you say to Augusta?

A. To Augusta is 60 cents from Cincinnati, third class, when not released.

Q. 59. It is not $1.07?

A. $1.07 is first class; buggies to Augusta third class it is 81 cents; to Social Circle for third class it is $1.06. I got into the wrong line when answering at first.

Q. 60. When buggies are shipped from Cincinnati to Augusta, in car-load lots as first class, what is the rate per 100 pounds?

A. The tariff fixes the rate for car-load lots for buggies at third class, when not released.

(Plaintiff's counsel objects to the answer as not responsive to the question.)

Q. 61. The question is not what the buggies would cost
421 shipped as third class but as first class. When buggies are shipped from Cincinnati, via Cincinnati Southern and W. & A. R. R. and Georgia R. R. to Augusta, Ga., in car-load lots as first-class freight, what is the rate charged?

A. As we don't have first class on such shipments, as we do not charge first class on buggies in car-load lots, we consider that question as not bearing on the subject.

Q. 62. Then I understand that you never charge the rate on buggies from Cincinnati to Augusta, Ga., over the route designated in car-load lots. Is it never higher than 81 cents per hundred pounds?

A. It should not be so when properly boxed and crated.

Q. 63. When properly boxed and crated I understand you to say the rate is never higher than 81 cents per hundred pounds?

A. No, sir; in car-load lots.

Q. 64. What is the rate on buggies over the routes designated in car-load lots to Social Circle, Ga.?

A. One dollar and six cents per hundred pounds when not released, in car-load lots.

Q. 65. How much of the $1.06 is received by the Georgia R. R.?

A. Twenty-five cents per hundred pounds.

Q. 66. How much of the 81 cents is received by the Georgia R. R. to Augusta?

A. Twenty-one cents per hundred pounds in car-load lots, when not released.

Q. 67. Is there any difference when released?

A. Yes, sir. It is charged for as fourth class.

Q. 68. What would be the rate under that class?

A. To Augusta it would be 68 cents per 100 pounds, and to Social Circle it would be 90 cents per 100 pounds.

Q. 69. Mr. Marsh, what elements make up the cost of transportation?

A. The cost of—well, the cars used, coal, oils, etc., wages of engineers, firemen, conductors and of the men of the railroad who assist—the general expenses of the railroad chargeable to freight traffic. That is what we call cost of transportation.

422 Q. 70. Does it include everything expended by the railroad necessary in hauling the articles from one point to another point?

A. Yes, sir; supposed to be so.

Q. 71. What is cost of service?

A. Cost of service is just about the same thing, I think.

Q. 72. What is value of service?

A. The value of service is the cost of service with enough to pay

profit, to pay fixed charges, and reasonable interest on investments, on capital.

Q. 73. In the 3.59 cents which you stated a moment ago of the cost of transportation per 100 pounds on the Georgia railroad, did you mean to say that it cost the Georgia railroad 3.59 cents to haul 100 pounds of freight from the city of Atlanta to the city of Augusta?

A. On tables made up for this train, that is what we make it.

Q. 74. Now what does the railroad get for hauling that 100 pounds from Atlanta to Augusta on that train?

A. That depends on the character of the freight transported.

Q. 75. On first-class freight what does it get?

A. First-class freight local from Atlanta to Augusta is 64 cents per 100 pounds.

Q. 76. And it cost them 3.59 to haul it?

A. Emphasis might be put on the fact that it was first-class freight.

Q. 77. Can you tell me what the cost of service is on the Ga. R. R., for hauling 100 pounds of freight the distance of one mile?

A. I think I can, sir. I will have to do some figuring to do it. (Witness figures.) I make it forty-seven thousandths of a cent for carrying one 100 pounds of freight one mile, taking an average of all kinds of freight—cheap freight and all kinds of freight, as shown by our report to the Interstate Commerce Commission.

Q. 78. Is that cost of transportation or cost of service?

A. That would be about the same thing, according to my definition.

423 Q. 79. Is the element of wear and tear included in the cost of transportation?

A. Yes, sir; it includes wear and tear.

Q. 80. What does not include cost of wear and tear—what elements constitute the cost of transportation?

A. The expense chargeable to freight traffic, including wear and tear.

Q. 81. Enumerate those expenses?

A. The expenses are very numerous, of course; in short, you would say the entire expenses of a railroad company, labor, material, etc., that are chargeable to freight traffic.

Q. 82. Is that the most definite answer that you can give to that question after an experience of eight years in railroad service?

A. That is the most definite answer that occurs to me at present.

Q. 83. Is there any difference between the cost of service and the cost of transportation, if so, what is it?

A. If you define in your own mind the cost of service and the cost of transportation as the same thing, I see no difference, if you mean that the cost of the service, according to your way of looking at it, should allow for reasonable profits on the investment, etc., I would say there was a difference.

Q. 84. Is that the most definite answer you can give to this question, after eight years of railroad service?

A. That is the best that occurs to me at present.

Q. 85. Mr. Marsh, explain how the $1.00 per mile run, the cost per train mile is reached?

A. It is reached from our annual report to the Interstate Commerce Commission of the United States for the year ending June 30th, 1891, and more particularly suggested also by same expenses on other railroads. I think that is generally accepted as about correct on other railroads.

(Plaintiffs' counsel objects to that answer because it is not responsive to the question.)

Q. 86. What I want you to tell me is, how is it reached, as far as the Georgia railroad is concerned?

424 A. It is shown by our report to the Interstate Commerce Commission for 1891.

Q. 87. Can you look on that report and explain how the $1.00 basis is reached?

A. Yes, sir.

Q. 88. I would consider it a favor if you would do so.

A. The total freight-train mileage for said report is 857,245, and the total expenses chargeable to freight traffic is $844,593.55; by dividing one into the other it will show a result of about $1.00 per train mile run.

Q. 89. Look on the report and state the revenue received by the road for the time referred to from freight business.

A. $1,348,388.11.

Q. 90. Now, Mr. Marsh, is it not true that the calculation in Exhibit 1 is based upon the $1 per mile run basis?

A. Yes, sir.

Q. 91. Is it not true that the calculations in Exhibit 2 are all made on the same basis?

A. Yes, sir.

Q. 92. If the one-dollar basis is the cost per train mile per mile run—if the one dollar which is the basis of this calculation is the cost of transportation, would the result of your calculation be the same if the $1 is the cost of service?

A. Yes, sir.

Q. 93. What has the printed matter in Exhibits 1 and 2, separated from the calculation by a line, got to do with the calculation?

A. It is put there for the purpose of making comparisons of the various costs.

Q. 94. Where did you get the statistics in Exhibit 3?

A. From 1880 to 1891, inclusive, they were copied from the annual reports. From 1866 to 1879, inclusive, with exceptions below, they were taken from records kept of the number of bales of cotton transported, of the number of bushels of grain, barrels of flour and tons of fertilizers; the merchandise, class M. O. P. and remainder of

A. B. C., etc., were made by comparing with above classes of
425 freight on a basis which will compare very well by working out the other years, or most of the other years—don't recollect that I worked every year—the figures for the year 1866 being very meagre and had only bales of cotton for the year 1866, and the years 1867, '68 and '69 did not have tons of fertilizers.

Q. 95. What is the rate on buggies from Cincinnati via Cincinnati & Southern and Western & Atlantic and Ga. R. R. to Augusta in quantities less than car-loads boxed or crated and released and knocked down?

A. That is first class and is $1.07.

Q. 96. What is it to Social Circle, Ga.?

A. $1.37.

Q. 97. How much does the Ga. R. R. get from the $1.07?

A. It gets 28 cents per 100 pounds.

Q. 98. How much does it get of the $1.37?

A. It gets 30 cents.

Q. 99. What is the relative difference in the profit of the Ga. railroad in a shipment of buggies from Cincinnati to Social Circle and a shipment of buggies from Cincinnati to Augusta, considered with reference to the cost of transportation 3.59 per 100 pounds?

A. The cost of transportation 3.59 per 100 pounds applies to through freight train No. 6 for car-load lots and does not apply to local freight train No. 8 from Atlanta to Buckhead.

Q. 100. In order that you may understand the question, I will ask you what is the difference in the distance from Atlanta to Augusta and Atlanta to Social Circle?

A. Atlanta to Social Circle is 52 miles and the distance from Atlanta to Augusta is 171 miles.

Q. 101. The difference is 119 miles?

A. Yes, sir.

Q. 102. Now can you tell me the relative difference in the profit realized by the railroad company in the shipment of buggies from Cincinnati to Social Circle over a like shipment from Cincinnati to Augusta, considering the cost of transportation at 3.59 per 100
426 pounds, and the further fact that it is only 52 miles from Atlanta to Social Circle and 171 miles from Atlanta to Augusta?

A. The 3.59 for Augusta on train No. 6 represents the cost of 0.42 cents per ton per mile of car-load freight. The revenue from Atlanta to Social Circle, or rather the freight, is a great deal of it miscellaneous freight, which is 2.04 cents per ton per mile. This class of freight, therefore to Social Circle shows a much greater cost per ton per mile than said freight to Augusta.

Q. 103. What is the cost of transportation on first-class freight per 100 pounds from Atlanta to Social Circle?

A. It is 30 cents.

Q. 104. That is what you charge; now what is the cost of transportation?

A. On the basis, that is, of miscellaneous freight 5.30 cents for the entire distance.

Q. 105. Are not rates fixed upon a basis of mileage?

A. No, sir; not always.

Q. 106. Is it not a fact that if $1.07 is charged on a shipment of buggies from Cincinnati via Atlanta to Augusta and $1.37 per 100 pounds is charged upon like shipment of buggies from Cincinnati to Social Circle that the railroad companies transporting the property receive a larger rate for the short haul than they do for the long haul?

A. Yes, sir; they receive a larger rate.

Redirect examination:

Q. 1. Please state whether the facts set forth in Ex. 1, 2 and 3 of your depositions are true or false, according to the best of your knowledge, information and belief.

A. They are true, to the best of my knowledge, information and belief.

Q. 2. On page 6 of your cross-examination you are asked to explain the phrase "equivalent tons of one mile of miscellaneous freight." Suppose 100,000 pounds of miscellaneous freight are carried four miles; to how many tons carried one mile are they equivalent?

427 A. Two hundred tons, sir.

Q. 3. Does that illustration correctly explain the meaning of the phrase?

A. Yes, sir.

Q. 4. On page 11 of your cross-examination you say that it cost 3.59 per 100 pounds of first-class freight on through freight from Atlanta. To what point from Atlanta do you mean?

A. On through freight from Atlanta to Augusta. Almost all the freight went to Augusta; I presume that went also.

Q. 5. According to your statement filed with Ex. 1, from which the cost of 3.59 per 100 pounds is obtained, does it not apply to the lower classes of freight as well as to first-class freight?

A. Yes, sir.

Q. 6. You state on page 19 of your cross-examination that the cost of transportation on first-class freight per 100 pounds from Atlanta to Social Circle, as miscellaneous freight, is 5.30 cents per mile. Do you mean per mile or for the whole 52 miles?

A. 5.30 cents per mile is my understanding. I mean 5.30 cents for the entire distance.

Q. 7. For the year ending June 30th, 1891, state what were the gross freight earnings per ton per mile on the Georgia railroad?

A. June 30th, 1891, gross freight earnings were 1.49 cents.

Q. 8. During the same time what were the freight expenses per ton per mile as shown by report to Interstate Commerce Commission?

A. $\frac{94}{100}$ cents.

Q. 9. During the same time what were the average net freight earnings per ton per mile?

A. $\frac{55}{100}$ cents.

Q. 10. During the same time what were the total freight ton miles,

I mean by freight ton miles, the equivalent of the total number of tons carried upon the road one mile?

A. 90,370,108.

Q. 11. Please multiply the total freight ton miles by the average net freight earnings per ton per mile, and state what the net
428 freight earnings of the whole road amounted to during that year?

A. $497,035.59.

Q. 12. State what was the gross passenger revenue during the same time?

A. $542,890.83.

Q. 13. State what were the passenger expenses during the same time?

A. As per Interstate Commerce Report, $392,203.10.

Q. 14. What were the net passenger earnings during the same time?

A. $150,687.73.

Q. 15. Please add the net freight earnings to the net passenger earnings and state what the total net earnings of the road amounted to during that time?

A. $647,723.32.

Q. 16. I see it stated in the annual report for the year ending June 30th, 1891, that the total net earnings were $658,060.87? How do you account for the difference between the amount you have just stated as total net earnings and the amount as shown in the annual report to be the total net earnings?

A. We add an allowance for odd decimals to my amount; also small difference which Interstate Commerce Commission makes in expenses; the above earnings and expenses per ton per mile as stated by me being carried only two places in decimals.

Q. 17. You have been asked on cross-examination, what the Georgia Railroad Company's charges were on first-class goods to Augusta and Social Circle, and what the cost of transportation to Augusta and Social Circle was on first-class goods; please state the total amount of freight revenue received by the Georgia railroad during the year ending June 30, 1891; and then state how much of that revenue was derived from first-class freight?

A. Total freight revenue for the year ending June 30, 1891, was $1,348,388; total revenue from first-class freight during the same time $55,496.

Recross-examination:

(Plaintiffs' counsel objects at the proper time to each and all of the questions propounded in the redirect examination this
429 morning, and to the answer thereto, because the testimony of the witness is not the highest evidence of the facts inquired about. Secondly, because the testimony does not illustrate the issue in the case as made by the plaintiff.)

Q. 1. I see in your examination this morning when replying to

the questions of defendants' counsel that you refer continually to the paper in your hand; am I correct?

A. Yes, sir.

Q. 2. What is that paper?

A. The paper is memoranda, etc., taken from various papers in my possession and in some cases, I refer also to original papers.

Q. 3. To what original papers do you refer?

A. To Exhibit No. 3, to Interstate Commerce Report from us, from annual report, and from statement prepared by C. S. Sikes, traveling auditor, and from additions and subtractions made on memorandum.

Q. 4. Is Exhibit No. 3 an original paper, or abstract taken from an original paper?

A. The amount taken from Exhibit No. 3 was abstracted from our annual report.

Q. 5. Where are the papers or statements prepared by Mr. Sikes, to which you refer?

A. I have that paper in my possession. I took revenue from first-class freight from that paper.

Q. 6. When was the memoranda which you use- this morning to assist you in answering the questions of defendants' counsel prepared?

A. Almost all of it, if not all, was prepared last night.

Q. 7. At whose suggestion was it prepared?

A. At suggestion of Mr. Carlton Hillyer, auditor.

Q. 8. Who was present at the time it was prepared?

A. Mr. Hillyer and R. P. Marsh is all that I recollect being present.

Q. 9. What assistance did you receive from Mr. Hillyer in the preparation of that statement?

A. It was all, or nearly all of it, suggested by him.

430 Q. 10. What purpose did he state to you he wished you to prepare that statement for?

A. I think it was principally to show the net gross freight earnings per ton per mile, freight gross earnings, average per ton per mile, average freight expenses per ton per mile, and average net freight earnings per ton per mile; or more correctly speaking, I think, to show a comparison between said amounts.

Q. 11. Did not Mr. Hillyer tell you to prepare that statement in order to be able to answer the questions which would be propounded to you this morning by defendants' counsel?

A. That was the intention with which said figures were prepared.

Q. 12. Who informed you that that was the intention?

A. I can assume that it was; I don't recollect whether I heard it expressed in such language or not by anybody.

Q. 13. Were you substantially told by Mr. Hillyer that you would be examined on these points this morning?

A. I was expecting to be so examined.

Q. 14. Mr. Marsh, who told you that you would be so examined?

A. Well, I heard conversations between Mr. Hillyer and Mr. Baxter and I presume in those conversations that I heard said fact.

Q. 15. Did Mr. Hillyer after those conversations assist you in making that statement?

A. Well, he had a great deal to do with making up said statement; I don't know whether all of it occurred before or after those conversations.

Q. 16. What is the capital stock of the Georgia railroad?

A. I think it is $4,200,000. That is a question which hardly ever confronts me in my work, and I am not very positive.

Q. 17. Does that include the Macon & Augusta road?

A. No, sir; I think not.

Q. 18. In what way does the Georgia railroad own or control the Macon & Augusta?

A. I presume it either purchased the railroad or a controlling interest in the stock. It occurred before I went to work for
431 the Georgia railroad, and I know that we operate it as a branch of our railroad.

Q. 19. What amount of bonds are upon the Georgia railroad, and what rate of interest do they bear?

A. The bonds, I think, are $2,500,000, and I don't know what rate of interest they bear. My attention being called to Mr. Goodrich's report of the directors and president of the Georgia Railroad and Banking Company, I find that the bonds are $2,500,000, and $2,300,000 of these bearing 6 per cent. interest, and $200,000 bearing 5 per cent. interest.

Q. 20. What do you mean by "net average revenue" when asked by defendants' counsel in reference to the freight earnings; do you mean to say that the average net freight earnings per ton per mile was $1\frac{55}{100}$ cents after deducting every expense incident to the railroad?

A. I make them $1\frac{55}{100}$ cents per ton per mile—I make the average net freight earnings per ton per mile $1\frac{55}{100}$ cents after deducting all expenses chargeable to freight traffic.

Q. 21. Does the phrase "expenses chargeable to freight traffic" include every expense incident to or connected with the cost of transportation and the cost of service?

A. Yes, sir; I think so, defining the cost of service and the cost of transportation alike.

Q. 22. In your opinion is there any difference between the two?

A. No, sir; I think not. I think there is a difference between the cost of service and the value of service.

Q. 23. State what difference.

A. The value of service should allow profit enough to pay fixed charges and reasonable interest on investment, etc.

Q. 24. Is that the definition you gave of it upon yesterday evening?

A. If I recollect rightly, I said something of the same sort yesterday evening.

Q. 25. With whom have you conversed upon this question of the cost of transportation and the cost of service and value of service since the close of your examination yesterday evening?

432 A. That is my own idea, I think. I don't know that the idea was suggested to me in any conversation. I don't recollect it, though it may have been brought out in the course of some conversation. The conversation, though I don't know that I received any ideas of much importance from them, was doubtless with Mr. Hillyer or Mr. Baxter.

Q. 26. Have you in your possession any papers showing the amount of freight business done by the road, through and local, at Social Circle for the year ending June 30, 1891?

A. The annual report of our road for said year shows the freight to and from Social Circle to have been $43,505.

Q. 27. Does that include both local and through freight?

A. Yes, sir.

Q. 28. Does your annual report show how much was local and how much was through freight?

A. I would call it all local freight, as it is a local station.

Q. 29. Does the annual report show how much of this sum was for through and how much for what is known as local business?

A. No, sir.

(Plaintiffs' counsel at the proper time objects to Ex. 1 and 2 for the additional reason that a great portion of the same are argumentative; make suggestions rather than give facts.)

Q. 30. Is it not true that you have made the corrections which appear in your testimony, as written with pen, after the examination and after you had inspected your manuscript and papers and pamphlets; and were you not assisted in doing same, and in comparing the corrections, by Mr. Carlton Hillyer?

A. Yes, sir.

The witness was sworn after the questions were answered and corrections made; M. J. McCord, examiner.

RALPH P. MARSH.

433 (EXHIBIT No. 1.)

Georgia Railroad Company.

AUGUSTA, GA., *April* 8, 1892.

Statement prepared by R. P. Marsh, ledger clerk, showing work done by through freight train No. 6, on Georgia R. R., between Atlanta and Augusta, on March 21st, 22d, and 23rd, 1892, showing cost per ton per mile of gross weight carried on trains and cost per ton per mile of net weight of miscellaneous freight and net weight of car-load freight; also comparison of cost of these two classes of freight.

Through freight train No. 6, from Atlanta to Augusta, March 21st, 22nd, and 23rd, 1892.

Equivalent tons one mile of miscellaneous freight.....	8,404
Equivalent tons one mile of cars carrying miscellaneous freight.....	27,334
Total	35,738

Q. 15. Did Mr. Hillyer after those conversations assist you in making that statement?

A. Well, he had a great deal to do with making up said statement; I don't know whether all of it occurred before or after those conversations.

Q. 16. What is the capital stock of the Georgia railroad?

A. I think it is $4,200,000. That is a question which hardly ever confronts me in my work, and I am not very positive.

Q. 17. Does that include the Macon & Augusta road?

A. No, sir; I think not.

Q. 18. In what way does the Georgia railroad own or control the Macon & Augusta?

A. I presume it either purchased the railroad or a controlling interest in the stock. It occurred before I went to work for
431 the Georgia railroad, and I know that we operate it as a branch of our railroad.

Q. 19. What amount of bonds are upon the Georgia railroad, and what rate of interest do they bear?

A. The bonds, I think, are $2,500,000, and I don't know what rate of interest they bear. My attention being called to Mr. Goodrich's report of the directors and president of the Georgia Railroad and Banking Company, I find that the bonds are $2,500,000, and $2,300,000 of these bearing 6 per cent. interest, and $200,000 bearing 5 per cent. interest.

Q. 20. What do you mean by "net average revenue" when asked by defendants' counsel in reference to the freight earnings; do you mean to say that the average net freight earnings per ton per mile was $\frac{5.5}{100}$ cents after deducting every expense incident to the railroad?

A. I make them $\frac{5.5}{100}$ cents per ton per mile—I make the average net freight earnings per ton per mile $\frac{5.5}{100}$ cents after deducting all expenses chargeable to freight traffic.

Q. 21. Does the phrase "expenses chargeable to freight traffic" include every expense incident to or connected with the cost of transportation and the cost of service?

A. Yes, sir; I think so, defining the cost of service and the cost of transportation alike.

Q. 22. In your opinion is there any difference between the two?

A. No, sir; I think not. I think there is a difference between the cost of service and the value of service.

Q. 23. State what difference.

A. The value of service should allow profit enough to pay fixed charges and reasonable interest on investment, etc.

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Q. 27. Does that include both local and through freight?

A. Yes, sir.

Q. 28. Does your annual report show how much was local and how much was through freight?

A. I would call it all local freight, as it is a local station.

Q. 29. Does the annual report show how much of this sum was for through and how much for what is known as local business?

A. No, sir.

(Plaintiffs' counsel at the proper time objects to Ex. 1 and 2 for the additional reason that a great portion of the same are argumentative; make suggestions rather than give facts.)

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A. Yes, sir.

The witness was sworn after the questions were answered and corrections made; M. J. McCord, examiner.

RALPH P. MARSH.

433 (EXHIBIT No. 1.)

Georgia Railroad Company.

AUGUSTA, GA., *April* 8, 1892.

Statement prepared by R. P. Marsh, ledger clerk, showing work done by through freight train No. 6, on Georgia R. R., between Atlanta and Augusta, on March 21st, 22d, and 23rd, 1892, showing cost per ton per mile of gross weight carried on trains and cost per ton per mile of net weight of miscellaneous freight and net weight of car-load freight; also comparison of cost of these two classes of freight.

Through freight train No. 6, from Atlanta to Augusta, March 21st, 22nd, and 23rd, 1892.

Equivalent tons one mile of miscellaneous freight.....	8,404
Equivalent tons one mile of cars carrying miscellaneous freight.....	27,334
Total	35,738

Percentage of paying weights to total weight	$23\frac{51}{100}$
Equivalent tons one mile of car-load freight	104,568
Equivalent tons one mile of cars carrying car-load freight	105,007
Total	209,575
Percentage of paying weight to total weight	$49\frac{89}{100}$
Equivalent tons one mile of both miscellaneous and car-load freight	112,972
Equivalent tons one mile of cars carrying both miscellaneous and car-load freight	132,341
Total	245,313
Percentage of paying weight to total weight	$46\frac{05}{100}$
Daily average number of cars starting from Atlanta March 21st, 22nd and 23rd	$19\frac{33}{100}$
Daily average number of same cars arriving at Augusta, March 21st, 22nd and 23rd	$17\frac{33}{100}$
Daily average number of tons in cars starting from Atlanta, March 21st, 22nd and 23rd	$231\frac{086}{1000}$
Daily average number of same tons left in cars arriving Augusta, March 21st, 22nd and 23rd	$208\frac{42}{100}$

434 Deduction from through freight train No. 6 on basis that cost per train mile is one dollar per mile run.

Total number of tons one mile gross weight handled by train 6, between Atlanta and Augusta, March 21st, 22nd and 23rd, 1892 245,313

Length of division ..... 171 miles.

Total cost of hauling train, Atlanta to Augusta, at $1 per mile run ..... $171 \times 3 = \$513.00$

Cost, per ton per mile of gross weight ... $\frac{\$513.00}{245313} = 0.209$ cents.

Cost per Ton per Mile of Miscellaneous Freight.

Cost of gross tons carried on account of miscellaneous freight .. $35738 \times 0.209 = \$74.74$

Cost per ton per mile of miscellaneous freight ..... $\frac{\$74.74}{8404} = 0.889$ cents

Cost per Ton per Mile of Car-load Freight.

Cost of gross tons carried on account of car-load freight ..... $209{,}575 \times 0.209 = \$438.26$

Cost per ton per mile of car-load freight ..... $\frac{\$438.26}{104568} = 0.42$ cents.

Showing the cost of miscellaneous freight on this train to be more than twice as much per ton per mile as the cost of car-load freight.

The cost for moving freight in partially loaded cars in train No. 7, was 2.04 cents per ton per mile, being about five times the cost of 0.42 cents per ton per mile for moving freight in fully loaded cars in train No. 6.

The cost for moving freight in partially loaded cars in train No. 7, was 8.10 cents per ton per mile, being nineteen times the cost of 0.42 cents per ton per mile for moving freight in fully loaded cars in train No. 6.

435 (EXHIBIT No. 2.)

Georgia Railroad Company.

AUGUSTA, GA., *April* 8, 1892.

Statement prepared by R. P. Marsh, ledger clerk, showing work done by local freight trains on Georgia railroad, between Atlanta and Buckhead, on March 21st, 22nd, and 23rd, 1892, showing cost per ton per mile of gross weight carried on trains and cost per ton per mile of net weight of miscellaneous freight and net weight of car-load freight; also comparison of cost of these two classes of freight.

Local freight train No. 8, from Atlanta to Buckhead, March 21st, 22nd, and 23rd, 1892.

Equivalent tons, one mile of miscellaneous freight.....	7,345
Equivalent tons, one mile of cars carrying miscellaneous freight	29,414
Total.....	36,759
Percentage of paying weight to total weight	19_{100}^{98}
Equivalent tons, one mile of car-load freight.....	10,248
Equivalent tons, one mile of cars carrying car-load freight.	8,188
Total	18,436
Percentage of paying weight to total weight.....	55_{100}^{59}
Equivalent tons, one mile of both miscellaneous and car-load freight..... ..	17,593
Equivalent tons, one mile of cars carying both miscellaneous and car-load freight	37,602
Total	55,195
Percentage of paying weight to total weight.....	31_{100}^{87}
Cars starting from Atlanta, March 21st, 22nd and 23rd, average per day	19_{100}^{33}

Same cars arriving at Buckhead, March 21st, 22nd and 23rd, average per day 4
Tons in cars starting from Atlanta, March 21st, 22nd and 23d, average per day ..... $132\frac{202}{1000}$
Same tons left in cars arriving at Buckhead, March 21st, 22nd and 23rd, average per day ..... $8\frac{215}{1000}$

436 Deduction from local freight train No. 8 on basis that cost per train mile is one dollar per mile run.

Total number of tons one mile gross weight handled by train 8, between Atlanta and Buckhead, March 21st, 22nd and 23rd, 1892 55,195
Length of division ..... 75 miles.
Total cost of hauling train from Atlanta to Buckhead, at $1 per mile run ..... $75 \times 3 =$ $225.00
Cost per ton per mile of gross weight .. $\frac{\$225.00}{55195} =$ 0.407 cents.

Cost per Ton per Mile of Miscellaneous Freight.

Cost of gross tons carried on account of miscellaneous freight ..... $36759 \times 0.407 =$ $149.85
Cost per ton per mile of miscellaneous freight ..... $\frac{\$149.85}{7345} =$ 2.04 cents.

Cost per Ton per Mile of Car-load Freight.

Cost of gross tons carried on account of car-load freight ..... $18436 \times 0.407 =$ $75.15
Cost per ton per mile of car-load freight ..... $\frac{\$75.15}{10248} =$ 0.73 cents.

Showing the cost of miscellaneous freight on this train to be about three times as much per ton per mile as the cost of car-load freight.

Local freight train No. 7, from Buckhead to Atlanta, March 21st, 22nd, and 23rd, 1892.

Equivalent tons, one mile of miscellaneous freight 1,586
Equivalent tons, one mile of cars carrying miscellaneous freight 21,428
Total 23,014
Percentage of paying weight to total weight ..... $6\frac{89}{100}$

Equivalent tons, one mile of car-load freight 11,020
Equivalent tons, one mile of cars carrying car-load freight. 6,259

Total 17,279

Percentage of paying weight to total weight..... $63\frac{77}{100}$

Equivalent tons, one mile of both miscellaneous and car-load freight..... 12,606
Equivalent tons, one mile of cars carrying both miscellaneous and car-load freight 27,687

Total 40,293

437 Percentage of paying weight to total weight..... $31\frac{28}{100}$
Daily average number of cars starting from Buckhead, March 21st, 22nd and 23rd..... $5\frac{33}{100}$
Daily average number of same cars arriving at Atlanta, March 21st, 22nd and 23rd..... 1
Daily average number of tons in cars starting from Buckhead, March 21st, 22nd and 23rd..... ..... $6\frac{555}{1000}$
Daily average number of same tons left in cars arriving — Atlanta, March 21st, 22nd and 23rd..... $\frac{217}{1000}$

Deduction from local freight train No. 7 on basis that cost per train mile is one dollar per mile run.

Total number of tons one mile gross weight handled by train 7, between Buckhead and Atlanta, March 21st, 22nd and 23rd, 1892..... 40,293
Length of division..... 75 miles.
Total cost of hauling train, Buckhead to Atlanta, at $1 per mile run..... $75 \times 3 = \$225.00$
Cost per ton per mile of gross weight.. $\frac{\$225.00}{40293} =$ 0.558 cents.

Cost per Ton per Mile of Miscellaneous Freight.

Cost of gross tons carried on account of miscellaneous freight ..... $23014 \times 0.558 = \$128.52$
Cost per ton per mile of miscellaneous freight.... ... . $\frac{\$128.52}{1586} =$ 8.1 cents.

Cost per Ton per Mile of Car-load Freight.

Cost of gross tons carried on account of car-load freight..... .... $17279 \times 0.558 = \$96.48$
Cost per ton per mile of car-load freight..... $\frac{\$96.48}{11020} =$ 0.875 cents.

Showing that the cost of miscellaneous freight on this train is about nine and one-quarter times as much as the cost of car-load freight per ton per mile, but compared with cost on train No. 8, the miscellaneous freight costs 8.1 cents per ton, while on eastward-bound train No. 8 it costs only 2.04 cents per ton per mile. This is owing to the fact that the eastward-bound train carried a larger proportion of well-loaded cars, the tonnage mileage of miscellaneous freight on the east-bound being 7,345, while on train No. 7 it is only 1,586 tons.

438 Local freight trains Nos. 7 and 8, in both directions between Atlanta and Buckhead, March 21st, 22nd, and 23rd, 1892.

Equivalent tons, one mile of miscellaneous freight	8,931
Equivalent tons, one mile of cars carrying miscellaneous freight	50,842
Total	59,773
Percentage of paying weight to total weight	$14\frac{94}{100}$
Equivalent tons, one mile of car-load freight	21,268
Equivalent tons, one mile of cars carrying car-load freight	14,447
Total	35,715
Percentage of paying weight to total weight	$59\frac{55}{100}$
Equivalent tons, one mile of both miscellaneous and car-load freight	30,199
Equivalent tons, one mile of cars carrying both miscellaneous and car-load freight	65,289
Total	95,488
Percentage of paying weight to total weight	$31\frac{62}{100}$
Daily average number of cars with which trains started	$12\frac{33}{100}$
Daily average number of same cars with which trains arrived at destination	$2\frac{5}{10}$
Daily average number of tons in cars at starting point	$69\frac{378}{1000}$
Daily average number of same tons left in cars arriving at destination of trains.	$4\frac{216}{1000}$

Deduction from local freight trains Nos. 7 and 8 on basis that cost per train mile is one dollar per mile run.

Total number of tons one mile gross weight handled by trains Nos. 7 and 8 in both directions between Atlanta and Buckhead, March 21st, 22nd and 23rd, 1892	95,488	
Length of division (round trip between Atlanta and Buckhead), 75 × 2 =		150 miles.
Total cost of hauling trains, Atlanta to Buckhead, and Buckhead to Atlanta, 75 × 6 =	$450.00	
Cost per ton per mile gross weight, $\frac{\$450.00}{95488}$ =		0.471 cents.

439 *Cost per Ton per Mile of Miscellaneous Freight.*

Cost of gross tons carried on account of miscellaneous freight. $59{,}773 \times 0.471 = \$281.69$

Cost per ton per mile of miscellaneous freight. $\dfrac{\$281.69}{8931} = 3\frac{15}{100}$ cents.

Cost per Ton per Mile of Car-load Freight.

Cost of gross tons carried on account of car-load freight. $35{,}715 \times 0.471 = \$168.31$

Cost per ton per mile of car-load freight. $\dfrac{\$168.31}{21268} = 0.79$ cents.

Showing that the average cost of miscellaneous freight, east and west bound, on the six trains, was about four times as much per ton per mile as the cost of car-load freight on the same trains.

Comparison of cost of hauling local freight for distribution between Buckhead and Atlanta, on the Georgia railroad, on local train, with estimated cost of hauling miscellaneous freight which would pass over the whole distance.

If train No 7 with 30 cars, weighing 11 tons each, starting from Buckhead with 7 tons in each car such being the capacity of our engines on said train, should pass over the entire distance from Buckhead to Atlanta without taking on or off any cars at intermediate stations, the cost would have been as follows:

$$11 + 7 \times 30 = 540 \text{ tons.}$$

On basis that cost per train mile is one dollar per mile run.

The cost per gross ton, per mile, is therefore: $\dfrac{1.00}{540} = 0.185$ cents.

Number of tons of net freight on train, $7 \times 30 = 210$.

Proportion of net load to gross load as 210 to 540, or as 1 is to 2.57, and the cost per ton per mile, $2.57 \times 0.185 = 0.47$ cents.

Comparing this cost with the cost of distributing freight, which was 8.1 cents per ton per mile, as per statement deduction from local freight train No. 7, it shows that under the conditions named the cost of distributing per ton per mile is seventeen times as great as the cost of through miscellaneous freight in cars loaded with 7 tons per car, if a full train-load of such freight could be secured.

(EXHIBIT No. 3.)

Georgia Railroad Company.

AUGUSTA, GA., *April* 8, 1892.

Statement Prepared by R. P. Marsh, Ledger Clerk, Showing the Ton Mileage and Average Rate per Ton per Mile of Freights Carried by the Georgia Railroad from 1866 *to* 1891, *Inclusive.*

Years.	Miles of road operated.	Ton mileage.	Freight revenue.	Average rate per ton per mile.
Fiscal year ending March 31, 1866	242	15,128,370	761,974	5.04 cents.
" " 1867	242	14,715,777	707,117	4.81 "
" " 1868	231	15,403,431	715,358	4.64 "
" " 1869	231	18,583,950	782,732	4.21 "
" " 1870	231	18,503,727	952,340	5.15 "
" " 1871	231	20,397,119	1,104,945	5.42 "
" " 1872	231	22,830,040	965,374	4.23 "
" " 1873	231	41,983,337	1,248,117	2.97 "
" " 1874	231	35,203,443	1,264,738	3.59 "
" " 1875	231	35,094,465	1,009,419	2.88 "
" " 1876	231	32,056,281	949,205	2.96 "
" " 1877	231	41,247,620	948,847	2.30 "
" " 1878	231	34,895,298	821,816	2.36 "
" " 1879	275	35,510,836	797,814	2.25 "
" " 1880	307	37,085,356	914,080	2.46 "
" " 1881	307	49,961,644	1,064,942	2.13 "
" " 1882	307	45,705,074	947,624	2.07 "
" " 1883	307	46,509,431	951,807	2.05 "
" " 1884	307	53,230,838	929,928	1.75 "
" " 1885	307	56,132,771	907,046	1.62 "
" " 1886	307	56,541,155	950,209	1.68 "
" " 1887	307	61,959,262	990,731	1.60 "
" " 1888	307	64,899,408	1,089,321	1.68 "
" June 30, 1889	307	75,135,387	1,126,304	1.50 "
" " 1890	307	81,601,022	1,202,266	1.47 "
" " 1891	307	90,370,108	1,348,38	1.49 "

441 *Testimony of W. C. Dennis, of Atlanta, Ga.*

Q. 1. State your name, age, residence and occupation.

A. W. C. Dennis; 27 years old; Atlanta, Ga.; clerk of the Southern Railway and Steamship Association.

Q. 2. Is there a record in your office showing the movement of freight of the first class from Cincinnati and other Ohio River points to Atlanta, Ga., and to points on the Georgia railroad between Atlanta and Augusta?

A. Yes.

Q. 3. Have you examined or directed the examination of those records so as to be able to express an opinion as to the loss which will ensue if the rate on such freight is reduced to $1.00 per 100 pounds; if so, state what the amount of such loss, in your opinion, would be since July 20th, 1891, had that reduced rate been in effect.

A. In my opinion the loss would have amounted to exceeding $2,000.

W. C. DENNIS.

Testimony of W. M. Barnes, of Augusta, Ga.

Q. 1. Please state your name, age, residence and occupation.

A. W. M. Barnes, Augusta, Ga.; occupation steamboat agent.

Q. 2. How long have you been such agent, and for what boat?

A. Twelve years, steamer Katie, the principal one.

Q. 3. On what river does that steamer ply, and between what points?

A. On the Savannah river between Augusta and Savannah.

Q. 4. What is the distance from Savannah to Augusta by river, about?

A. According to the last survey of the United States Government the distance is 201 miles.

Q. 5. What length of time is usually required by that steamboat to make a round trip from Savannah to Augusta and return?

442 A. You mean actual time occupied?

Q. 6. I mean the time usually required for the boat to go from Savannah to Augusta and return to Savannah—I do not mean the actual running time.

A. Six days.

Q. 7. How many tons of freight can your boat carry safely loaded?

A. 200 tons.

Q. 8. State the nature of your duties as agent, so far as they relate to the rates charged by your boat for transporting freight—in other words explain whether or not the duties of your agency have any relation to charging rates of freight.

A. My duties are in making all through rates of freight from and to Augusta, and collecting them, and in collecting on all bills of freight so made.

Q. 9. How many steamboats are engaged in transportation of freight on the Savannah river between Savannah and Augusta?

A. One.

Q. 10. And is that your boat?

A. It is the boat I am agent for.

Q. 11. Suppose you were offered steady business,—full cargoes made up of the different classes of freight in the usual proportions in which such classes move in shipment in this section of the country; what would you be willing to accept per 100 pounds on first-class freight from Savannah to Augusta?

A. Under such conditions as those we would be willing to accept 30 cents per hundred on first-class freight.

Cross-examination:

Q. 1. Mr. Barnes, you say that there is only one boat doing a traffic business on the Savannah river; how long has that been the status of water transportation?

A. There is only one boat running from Savannah to Augusta, but there is one other boat running from Savannah to within seventy-five miles of Augusta, making two trips per week. It has been about one year since two other boats that *was* (were) running to Augusta were taken off.

443 Q. 2. What proportion of the business of Augusta to eastern points and from eastern points does your boat do?

A. Without having any definite information at hand, I should judge that the boats carried about 20 per cent. of the eastern freights to Augusta.

Q. 3. I mean what per cent. does your boat do?

A About twenty per cent.

Q. 4. Does your boat run all the year round?

A. Yes, sir; whenever we can.

Q. 5. What do you mean by whenever you can?

A. By that I mean ordinary accidents that interrupts trips, and I had in mind when I made the answer the low water and sand bars that interrupt the navigation to Augusta; but we always run on the lower end of the river when not able to go through to Augusta.

Q. 6. What proportion of the time are you prevented from running to Augusta by low water, sand bars and natural obstructions?

A. Not over two or three trips during a year for the past five years.

Q. 7. Prior to that time, how much time was lost?

A. Prior to that time, to the best of my recollection, it varied from one to five months during a year,—one month some years and five months other years.

Q. 8. In cross-question No. 2, I asked you what proportion of the business to eastern points and from eastern points does your boat do; you answered, that the boat carried about twenty per cent. of the eastern freight to Augusta. Do I understand you to say that

your boat carries twenty per cent. of the business of Augusta to eastern points?

A. No, sir; I mean only from eastern points to Augusta.

Q. 9. Is it not true, Mr. Barnes, that most of the business done by the boat is local business?

A. Our principal business on the river is local, but the eastern freight into Augusta amounts to a great deal, giving us an average cargo to Augusta of about seventy-five tons per week.

444 Q. 10. In the transportation, how many miles of water are allowed for one mile of rail?

A. That is a question I have never been posted on.

Q. 11. In ocean traffic is not three miles of water allowed for one mile of rail?

A. I don't know, sir.

Q. 12. Are you a promiscuous boat or do you have regular connections to eastern points?

A. We have no regular established connections with through lines outside of the lines already running into Savannah.

Q. 13. In answer to direct question No. 11, you answered that if you were offered steady business and full cargoes, made up of the different classes of freight in the usual proportions in which such classes move in shipment in this section of the country, you would be willing to take 30 cents per 100 pounds on first-class freight from Savannah to Augusta. As a matter of fact, what do you charge on first-class freight per 100 pounds from Savannah to Augusta?

A. To the best of my recollection as regards such classes of freight, my charges run from 25 to 50 cents per 100 pounds.

Q. 14. What is the rate charged by the railroad from Savannah to Augusta on like shipments?

A. Under the rate card under which I am working the rate is put down at 41 cents on first class.

Q. 15. Has the boat business ever been able to do much on the Savannah river from Savannah to Augusta?

A. There has not been enough business to keep up a line of boats, owing to the fact that whenever the boats are put on there are special rates made by the railroads on the principal freights that are handled by boats, and the merchants will never ship by the boats when they can get as good a rate by the railroad.

Redirect examination:

Q. 1. Under the conditions stated in direct question No. 11, what would you be willing to accept on first-class freight per 100 pounds from Brunswick, Ga., to Augusta, Ga.? How far is it from Brunswick to Savannah?

445 A. We would be willing to accept, under such conditions as those, from Brunswick to Augusta a rate of 45 cents per 100. The distance, to the best of my recollection, is between 100 and 125 miles.

Recross-examination.

Q. 1. Does your boat run to Brunswick?

A. She does not.

Q. 2. Is it built so as it can make the voyage from Savannah through the sound to Brunswick?

A. She could not go through the sound in very stormy weather, but she could make the trip with safety at almost any other time.

Q. 3. What amount of business stated in tonnage did your boat do last year?

A. To the best of my judgment between fifteen and twenty thousand tons.

Q. 4. How much of that was through business, to and from eastern points?

A. About one-fourth, to the best of my recollection at present.

W. M. BARNES.

Testimony of H. H. Raymond, of Atlanta, Ga.

Q. 1. Please state your name, age, residence and occupation.

A. H. H. Raymond, twenty-eight, Atlanta, general southern agent of the Mallory steamship line.

Q. 2. Has that line of steamships a set of boats plying between New York and Brunswick, Ga.?

A. Yes sir.

Q. 3. How many boats are engaged in the traffic between those two cities?

A. Two, and sometimes three; at some periods of the year three.

Q. 4. How many tons of freight can each of them carry, safely loaded?

A. Varying from two to four thousand tons, dead weight.

446 Q. 5. How long does it take one of those boats on an average to make a trip from New York to Brunswick and return?

A. Actual running time averages 120 hours, sixty hours each way. Time consumed from New York to Brunswick, including trip to Fernandina, forty miles distant, and return to New York, including the lay at the above-named three points, is fourteen days.

Q. 6. What is your average rate per 100 pounds on first-class freight governed by the classification of the Southern Railway and Steamship Association from New York, proper, to Brunswick, proper?

A. 65 cents per 100 pounds.

Q. 7. What is your average rate per 100 pounds on the same class of freight from New York, proper, to Brunswick, when the traffic is destined to interior points, such as Augusta, Atlanta or Macon, Ga., or to Birmingham, Montgomery or Selma, Ala.?

A. From 30 to 54 cents per 100 pounds.

Q. 8. What is your average rate per 100 pounds on the same class of freight from New York to Brunswick when the traffic originates

at western points, such as Detroit, Mich.; Chicago, Ill.; Cleveland or Cincinnati, O., or other points in that territory, and is destined to Brunswick?

A. Destined to Brunswick would be 30 cents.

Q. 9. What is your average rate per 100 pounds on the same class of freight from New York to Brunswick when the traffic originates in the territory referred to in the last question, and is destined to interior points, such as Augusta, Atlanta or Macon, Ga., or to Birmingham, Montgomery or Selma, Ala.?

A. 24 to 30 cents.

Q. 10. What is your average rate per 100 pounds on the same class of freight from New York to Brunswick when the traffic is destined to such points as Mobile, Ala., Vicksburg, Miss., Memphis, Tenn.?

A. It would be 18 to 22 cents.

Q. 11. What is the usual rate per 100 pounds on the same class of freight by sailing vessels from New York, Philadelphia, and Baltimore to Charleston, Savannah and Brunswick?

447 A. They quote an open rate of 30 cents per 100 pounds. I am not prepared to state what they would accept under or below this rate.

Cross-examination:

(Plaintiff's counsel object to each and all of the questions beginning with question No. 5 and to the answers thereto, because the evidence sought does not illustrate the issue involved in the case and made by the pleadings.)

Q. 12. Is the Mallory steamship line a member of the Southern Railway and Steamship Association?

A. No, sir.

Q. 13. Has it ever been a member of that association; if so, when did it withdraw?

A. It never has been a member of the present association.

Q. 14. Was it ever a member of the association either under the present name or under the name which it originally had?

A. Never since my connection with the Mallory line.

Q. 15. What do you mean by the phrase "average rate per 100 pounds on first-class freight," as used in answer to question No. 6?

A. The word "average" would not apply between New York proper, and Brunswick proper, as the rates are staple, first class being 65 cents per 100 pounds.

Q. 16. What has been for the last two years the fixed rate per 100 pounds on first-class freight from New York to Brunswick?

A. On strictly local business to Brunswick, Ga., it has been 65 cents per 100 pounds.

Q. 17. What do you mean by the phrase "average rate," in your answers to questions Nos. 7, 8, 9, 10 and so on?

A. Under traffic arrangements with roads diverging from Brunswick we prorate on a mileage basis; to points being near the port

we get a higher rate than to points into the interior, and in my answer to questions referred to I have made a fair average.

Q. 18. Have you, as the Mallory line, a soliciting agent in any of the western cities named in the direct questions?

A. No, sir. We depend upon railroad connections' agents.

Q. 19. What amount of traffic does the Mallory line carry
448 from the western market by way of New York, via Brunswick, to the interior points, Augusta, Macon, Atlanta, Birmingham, Montgomery or Selma?

A. Probably less than ten per cent., and probably less than ten per cent. of our tonnage.

Q. 20. It is then important in amount?

A. No, not at the rates we received. If rail rates were advanced from western points, water and rail lines, via New York, could compete with greater success than at the present time.

Q. 21. The advance would have to be considerable in order to warrant the statement, would it not?

A. I do not think it would have to be very great, but it would all depend on what roads centering at New York would demand for their proportion.

Q. 22. In answering questions propounded by defendants' counsel, you gave the average rate from New York to interior points in Georgia and Alabama, per 100 pounds, on first-class freight. Do your answers giving those amounts, exclude or include insurance?

A. They exclude insurance.

Q. 23. Is not insurance considered in the commercial world as almost a necessary element incident to water transportation?

A. It is necessary, and to all common points marine risk is assumed by carriers. Cost of the insurance premium is deducted from the through-rate initial point to destination before prorated.

Q. 24. What is the through rate per 100 pounds on first-class freight from New York via Brunswick and your line to Augusta, Ga.?

A. 96 cents.

Q. 25. To Macon, Ga.?

A. $1.09; to Atlanta, $1.14; to Birmingham, $1.14; Selma, $1.14.

Q. 26. Is insurance a necessary element of rail transportation?

A. I am not prepared to positively state; but in my experience I have always understood that railroads were responsible for property while in their possession.

449 Q. 27. Is it not true that the Mallory line is also responsible for property in its possession?

A. Yes, sir; barring acts of God, fire and water.

Q. 28. Were you furnished by defendants' counsel with the questions which you were to answer today; if so, when?

A. No, sir; I never met Mr. Baxter until this occasion.

Q. 29. By what classification of goods and table of rates is the Mallory line governed?

A. Governed by the rules, rates and regulations of the Southern Steamship and Railway Association.

Q. 30. Then it is true, if I understand you, though you are not a

member of the association, you are controlled and governed by it; am I correct?

A. No, sir.

Q. 31. Will you please explain the difference between the language you used, to wit: "governed by the rules, rates and regulations of the steamship association," and the language which I used in the last question?

A. You asked in your question No. 29 by what classification of goods, table of rates is the Mallory line governed; my answer was Southern Railway and Steamship Association. My answer did not mean to imply that we are forced to be governed by this association, for not being members they have absolutely no control over us. We use their rates, classifications, on account of our convenience, because railroads with which we connect and operate are members of the association, and to avoid confusion, is the best answer I can make to your question.

H. H. RAYMOND.

450 *Testimony of D. Miller, of Cincinnati, Ohio.*

Q. 1. State your name, residence and occupation?

A. D. Miller; traffic manager of the Queen and Crescent railroad; residence, Cincinnati.

Q. 2. Does The Cincinnati, New Orleans and Texas Pacific Railway Company, the defendant, for which you are traffic manager, receive goods for transportation from Cincinnati to Social Circle in Georgia, and to Augusta and Atlanta, and if so by what route the same said goods are carried?

A. We receive goods for all of the points named. To the local stations on the Georgia roads, such as Social Circle, we forward consignments via Chattanooga and Atlanta and the Georgia railroad.

Q. 3. What other routes for the transportation of goods are there from Cincinnati to Augusta and Atlanta?

(Objected to.)

A. 1. The L. & N. via Nashville and Atlanta.

2. The L. & N. via Jellico, E. T., V. & G. R. R. and Atlanta or Paint Rock.

3. L. & N., via Norton and N. & W. and R. & D. roads.

4. C. & O., via R. & D. and Augusta.

5. O. & M., via Louisville and C., O. & S. W., and connections, or via Odin and Illinois Central and connections.

6. Via trunk lines and North Atlantic coast points, in connection with steamers through Charleston and Savannah.

(Answer objected to for immateriality.)

Q. 4. What elements enter into determining rates from Cincinnati to Atlanta and Augusta, and did so at and prior to the order of the Interstate Commerce Commission on the 29th of June, 1891, and what, if any, competition is there between Cincinnati and said

points by water carriage, and to what extent, if at all, does said water carriage, if it exists, enter into said rates?

A. The rates from Cincinnati and other western points to Augusta and Atlanta are controlled by competition from eastern markets—that is, New York, Boston, Baltimore, etc. The rates from the latter points to Augusta and Atlanta are directly con-
451 trolled or fixed by the water carriers from those ports through Charleston and Savannah, thence by rail or water via Savannah river. The through rates from New York and other eastern markets are made by adding to the rates made by the steamships, New York, etc., to Charleston and Savannah, the rates of the carriers from the latter ports to Augusta and Atlanta. The rates of the rail lines from Savannah to Augusta and Atlanta being fixed by the Georgia State railroad commission. The rates, therefore, of the all-rail lines from New York, etc., to Atlanta and Augusta are fixed by the water routes, over which they have no control, which they are compelled to meet or abandon the business to the water carriers. Cincinnati, Louisville and other western points seek to compete with New York and other eastern cities for the trade of Atlanta, Augusta and adjacent territory. To do so successfully it is obvious there must be a relative adjustment of rates that will permit western shippers to deliver like commodities upon equal terms with eastern shippers in the common markets of Augusta, Atlanta and the Southeast. The lines more directly interested in the traffic of Cincinnati and western markets have, therefore, necessarily sought to make the rates from those points to Atlanta, Augusta, etc., upon this basis.

Q. 5. To what extent, if at all, are goods shipped from Cincinnati and other western points to Augusta wholly or partially by water; by what routes, if at all, are they shipped?

(Objected to.)

A. Formerly the Baltimore & Ohio and Chesapeake & Ohio carried considerable business from Cincinnati through their Virginia junctions, Baltimore, Newport News, via South Atlantic coast points to Augusta and points near the coast. The movement at this time via those routes from Cincinnati proper is very small. There is however a large amount of business handled from Chicago and northern points via these routes which directly affect our Cincinnati rates.

(Answer objected to for immateriality.)

Q. 6. In what manner does that business, or did it at the time of the making of this order, affect the Cincinnati rates? Ex-
452 plain it. State in connection with this whether the conditions affecting this traffic have been materially changed during the last eighteen months.

(Objected to.)

A. The conditions affecting the rates to Atlanta and Augusta and contiguous territory are now the same as have existed for

eighteen months or more past. The rates from Chicago, in connection with the steamer rates from any of the North Atlantic ports to Augusta would have a direct influence as to the through rate either from Cincinnati, Chicago or western points.

(Answer objected to for immateriality.)

Q. 7. To what extent, if at all, are goods shipped from seaboard points, such as New York, Baltimore, Philadelphia, to various points on the Georgia railroad, to wit: Augusta, Atlanta and Social Circle, and if so, by what route are they shipped?

(Objected to.)

A. The eastern cities are in direct competition with Cincinnati, Louisville and western markets for the trade of Augusta and the South, except, possibly, grain and meat products. Manufactured goods of all kinds, however, are produced in the East as well as the West, and the competition in such commodities, as between the East and the West, is direct and strong, making equalized rates necessary to possible competition in trade. There are five lines from the eastern cities to Augusta, etc.

(Objected to for immateriality.)

Q. 8. To what extent and in what manner does the existence of the water lines referred to in the preceding answer affect the total rate to Georgia points, if at all?

(Objected to.)

A. It is the controlling factor in making the rates. The rates from Savannah to Atlanta and Augusta are fixed by the Georgia railroad commission. These rates, added to whatever the steamships charge from New York and North Atlantic points to Savannah, make the through rates, which the rail lines are compelled to meet, or go out of business.

(Answer objected to for immateriality.)

Q. 9. In what manner and to what extent, if at all, does
453 this water competition from Atlantic coast points affect the Cincinnati rates?

A. It affects the Cincinnati rates in the way of competition between markets indirectly. In order to enable Louisville and Cincinnati and western markets to place their goods in Atlanta and Augusta on equal terms with New York and eastern cities, there must be a relative adjustment of rates to equalize markets.

Q. 10. In what manner are the rates fixed from Cincinnati to local points on the Georgia railroad between Augusta and Atlanta and Social Circle?

A. We have no arrangement with the Georgia railroad for making through rates from Louisville and Cincinnati to Social Circle or local points on that line. That company declines to agree with us on rates between those points. We, however, have an established rate to Atlanta and to Augusta, to which are added the local rates

of the Georgia railroad; that is, the rates that they charge from Atlanta and Augusta to Social Circle and other local points on the line. The sum of these rates makes a total through rate, which we have from time to time published for the information and convenience of shippers, but they are in no sense agreed through rates.

Q. 11. To what extent, if at all, would an increase in the rate from Cincinnati to Augusta, so that the same should be larger than to points between Atlanta and Augusta, affect the traffic from Cincinnati to Augusta, in your judgment?

A. An advance in the rate to Augusta would of course be to the advantage of the eastern seaboard cities, and to whatever extent the rate was advanced, the eastern markets would have that much advantage over the western markets and decrease the business from Louisville and Cincinnati proportionately.

Q. 12. To what extent, if at all, does a change of the first-class rate from Cincinnati to Atlanta affect through rates south of the Ohio river, whether first class or otherwise?

A. The rates from Louisville and Cincinnati to Atlanta, first class and all other classes, are made with relation to rates from other producing markets, such as Memphis, St. Louis, Evansville, Chi-
454 cago, New York and all eastern cities, and a change in the rate from any one of these points to Atlanta would affect the rates from all the other points to Atlanta, and indirectly to all other points in the southeast. The entire territory being controlled by the same factors that make the rates to Atlanta and Augusta, and any change in rates to one point affects the rates from and to all other points correspondingly.

Cross-examination:

Q. 1. Your line is commonly known as the Queen and Crescent system, is it not?

A. Yes, sir.

Q. 2. And you maintain a line from Cincinnati to Chattanooga, a distance of 336 miles?

A. That is correct.

Q. 3. And goods shipped through from Cincinnati to Georgia points are taken by you to Chattanooga and there delivered to the Western & Atlantic, East Tennesse, Virginia & Georgia or any one of the lines diverging from Chattanooga, and if delivered to the Western & Atlantic are carried by that line to *to* Atlanta, a distance of 138 miles?

A. Yes, sir.

Q. 4. And at Atlanta goods destined to Social Circle or Augusta are delivered to the Georgia railroad and carried 119 (52) miles to Social Circle and 171 miles to Augusta?

A. Yes, sir.

Q. 5. Does your company belong to what is known as the Southern Railway and Steamship Association?

A. We have been members of that association since January 14th, 1892.

Q. 6. That association has been in existence for several years, has it not?

A. For a number of years.

Q. 7. And one of the objects of that association is the bringing about of equality of rates to the different points covered by the association?

A. Uniform and reasonable rates.

Q. 8. And prior to the time when your system became a
455 member of that association, your company observed the rates which were in vogue in that association, did it not?

A. So far as Atlanta and Augusta are concerned our rates were the same as those authorized by the association, and as to Social Circle, the same system of making the rates was in vogue as now.

Q. 9. Suppose a shipper delivered to your line at Cincinnati first-class freight destined to Atlanta or Augusta, would the rate to either of those places be the same, although one city is 171 miles farther distant from Cincinnati than the other?

A. The first-class rate to Atlanta and Augusta from Cincinnati is the same.

Q. 10. And the rate is divided between the railroads according to the mileage?

A. Prorated on mileage.

Q. 11. So that if you carry goods to Atlanta you receive a greater sum per ton per mile than if the same goods were carried to Augusta, do you?

A. Yes, sir; the C., N. O. & T. P. earns more per mile in carrying the same quantity of goods of like class to Atlanta than it does to Augusta.

Q. 12. And does your company earn the same on goods destined to Social Circle that they do to either of the other points, Atlanta or Augusta?

A. We earn the same as we receive on Atlanta business.

Q. 13. So that, so far as your road is concerned, it makes a difference to your company whether the goods are destined to Atlanta, Augusta or any local point on the Georgia road?

A. We earn more per mile out of the same rate to Atlanta than to Augusta.

Q. 14. On goods shipped from Cincinnati to either of those three points, Atlanta, Social Circle or Augusta, where the freight is paid at Cincinnati, what do you do with the money you receive?

A. I suppose you mean prepaid freight?

Q. 15. Yes, sir.

456 A. We pay to the connecting lines the proportions due to them under our basis of division.

Q. 16. On the basis of mileage?

A. On mileage basis to Atlanta and Augusta, and retain in our treasury that due to us.

Q. 17. I understand you to say upon an agreed basis of division?

A. Yes, sir.

Q. 18. You receive the money; now what do you do with it?

A. We pay our connecting lines the amounts due them in accord-

ance with the agreed basis of division to Atlanta and Augusta. If it is destined to Social Circle, the Georgia railroad receives its local rate.

Q. 19. Does the Georgia railroad receive its local rate on the business destined to Social Circle, where freight is prepaid at Cincinnati, upon an agreed basis of division, in accordance with some arrangement between the different carriers to which your system is a party?

A. Yes, sir; agreed divisions of the rates to Atlanta and the arbitrary of the Georgia railroad beyond.

Q. 20. Now, prior to the time when you joined the Southern Railway and Steamship Association, the arrangement which you have spoken of existed independent of that association, between the different carriers?

A. Yes, sir.

Q. 21. And since your company had joined the association the common arrangement is in some respects controlled by that association, is it not?

A. Yes, sir; by agreement of all lines.

Q. 22. Do you know when this common arrangement in regard to the division of the freight rates between Cincinnati and these several points in Georgia had its origin?

A. I think the present basis has prevailed ever since the opening of this line in March, 1880, and possibly prior to that time.

Q. 23. In your testimony you spoke about the rate to Social Circle being published for the information of shippers. I understand from that that you have posted in your stations a
457 schedule of rates to Social Circle, made under this arrangement which you have with the different carriers?

A. Yes, sir. The Georgia road, however, requests us not to issue through rates to points on its line, and our agents are instructed not to insert through rates except where shippers may demand it, and we then do it for their convenience.

Q. 24. The posting of rates, if I understand you, you claim is done simply for the convenience of shippers, and not because you consider such posting to be required by the interstate commerce law; is that the distinction which you wish to make in regard to the publishing of these rates?

A. Yes, sir; that is, they are not through rates, made by agreement with the Georgia road.

Q. 25. Take the example which I made of goods destined to Social Circle, where the freight is prepaid to Cincinnati, you would tell the shipper what the gross amount of freight charged would be, would you not?

A. Yes, sir; we would tell him the through rate to Atlanta and Augusta, and what the local rate of the Georgia road was, and add those together for his convenience.

Q. 26. And you would issue to him a single bill lading, would you not?

A. Yes, sir; if demanded.

Q. 27. In the ordinary form?

A. Yes, sir.

Q. 28. Describing the goods and giving the point of shipment and destination?

A. Yes, sir; we would act as shipper's agent, in forwarding his goods from Atlanta.

Q. 29. After delivering to him this bill of lading and receiving the goods, you would ordinarily route the property via Chattanooga, East Tennessee, Virginia & Georgia and the Georgia railroad to Atlanta (Augusta), but if the shipper requested you would send it via the Western & Atlantic from Chattanooga?

A. Yes, sir.

Q. 30. And the charge to him would be the same whether routed by one line or the other?

458 A. Yes, sir.

Q. 31. In such a shipment the shipper would be given to understand that it was intended to be continuous from Cincinnati to the point of destination, would he not?

A. There might and there might not be breaking of bulk at Atlanta. Ordinarily if we had a full car-load of freight for points on the Georgia road it would be loaded through for that line and delivery made to them at Atlanta.

Q. 32. You intend that the shipment shall be continuous?

A. We would purpose to handle it with reasonable promptness.

Q. 33. It is not expected in case of such a shipment, that there will be any delay within the control of the shipper at either Chattanooga or Atlanta.

A. No, sir; we undertake to act as his agent and forward the goods promptly.

Q. 34. And so that, so far as he is concerned, I am speaking of the shipper, he deposits the goods with you at Cincinnati and through the medium of these several carriers the goods are delivered to the consignee named by him at Social Circle?

A. Yes, sir; for his convenience, we reship at various junction points with connecting lines.

Q. 35. And I believe it is conceded in this case that you would charge a shipper under this common arrangement, which you have, 30 cents more per hundred pounds on first-class freight in less than car-load lots, if the point of destination was Social Circle, than you would charge if the point of destination had been Augusta, which is 119 miles farther distant from Cincinnati that is Social Circle?

A. Yes, sir.

Q. 36. And if I understand your testimony, the reason which you urge as justifying this greater rate for the transportation of a like kind of property for the shorter than for the longer distance over the same line in the same direction, the shorter being included within the longer distance, it is the fact of competition at Augusta and at Atlanta by reason of these latter places being within the in-

459 fluence of the low rates both by rail and water in effect between the northern seaboard cities and those points; am I right about that?

A. Yes, sir; that this competition creates dissimilar circumstances

and conditions, and justifies a higher rate for the shorter than for the longer distance.

Q. 37. And your understanding of dissimilar circumstances and conditions are those facts in relation to the markets of the country to which you have testified?

A. I cannot conceive any more controlling influence than competition of markets in creating dissimilar circumstances and conditions.

Q. 38. It is a fact, is it not, that considering the many lines of transportation between the northeastern seaboard cities and Atlanta and Augusta, that those places are more favorably situated; that is, that those latter places are more favorably situated with respect to northeastern seaboard cities than they are with reference to Cincinnati, and that the low rates to Atlanta and Augusta, from Cincinnati, are made in order to equalize in some degree the disadvantage of location in which the Cincinnati shippers find themselves, are they not?

A. I do not consider that Cincinnati is located disadvantageously, as compared with New York. The distance from New York to Augusta is 797 miles; from Cincinnati, 645 miles; New York to Atlanta, 874; from Cincinnati, 474 miles. From Boston the distance is 213 miles greater than from New York. Under ordinary conditions the rates from Boston and New York to Atlanta and Augusta would be made entirely with respect to distance and cost of service, and upon such a basis the rates to intermediate points would in no case be higher than to points beyond, but for the reasons I have already stated, distance and cost of service is not the controlling factor in the establishment of rates to Augusta and like points. Cincinnati, as I have already stated, has several lines of transportation interested entirely in the transportation of goods from Cincinnati and western markets to Augusta and the Southeast—built for that purpose. These lines must meet the conditions of competition that they find to exist from the East or leave
460 the eastern markets and transportation lines to enjoy the exclusive control of that trade.

Q. 40. If I understand you then, the situation is this: Atlanta and Augusta are situated geographically as favorably with reference to Cincinnati as they are to the northeastern seaboard cities, so far as the rail communication is concerned, but the fact that the rail lines between the northeastern cities and Atlanta and Augusta come into competition with water transportation between those points, forces a low rate on the rail lines there, which the rail lines between Cincinnati and those points have to meet, or the Cincinnati manufacturers would be driven out of the market?

A. Yes, sir; except that as regards distance Cincinnati has the advantage of location.

Q. 41. You have spoken about several different lines between here (Cincinnati) and these three Georgia points—Louisville & Nashville, C. & O. and C. & O. Southwestern. All of these companies operating through that territory are members of the Southern Railway & Steamship Association, are they not?

A. The Louisville & Nashville and C. and O. Southwestern are members of the Southern Railway & Steamship Association; the others are not.

Q. 42. They all maintain the same rate between the points named, do they not?

A. They do as to first-class freight to the three points in question in this case.

Q. 43. I presume that traffic from Cincinnati does not now find its way to these points in Georgia by way of New York over any of the five lines of transportation from New York, does it?

A. Outside of the coast points but to a very limited extent.

Q. 44. Do the lines out of here (Cincinnati) quote rates from Cincinnati to the northeastern seaboard cities and thence south?

A. To coast points. I do not think they do now to interior points. To Savannah, Charleston and Brunswick, but not to Atlanta and Augusta.

D. MILLER.

461 *Testimony of Geo. R. Blanchard, of Chicago, Ill.*

Int. 1. State your name, age, residence and occupation?

Ans. to Int. 1. Name, George R. Blanchard; residence, New York; occupation, chairman of the Central Traffic Association of Railways, with office at Chicago, Ill.

Int. 2. State how long you have been connected with the traffic department of the railroad service in the United States, and what official positions in that service you have filled during that time?

Ans. to Int. 2. I have been connected with the traffic department of the United States railway service for thirty years, during which time I have held the positions of general freight agent of the Ohio & Mississippi R'y, Central Ohio, Baltimore & Ohio and Erie railways; was one of the vice-presidents of the latter and have occupied my present position for six years.

Int. 3. State whether or not the phrase "under substantially similar circumstances and conditions," as connected with the railroad transportion of passengers and property in the United States was, at and prior to February 4th, 1887, a railroad-traffic term?

Ans. to Int. 3. The precise phrase "under substantially similar circumstances and conditions" may not have been used, but the same idea is found in many annual railway reports, in testimony and argument before legislative committees of railway inquiry, the granger discussion of 1870 to 1873, etc., although expressed in alternate language, variously as follows: "The cases were unlike;" "When circumstances are similar;" "When conditions are the same;" "The contingencies differ;" "The surroundings were not the same."

I used and argued this idea, then old, before a Western Virginia legislative committee prior to 1870, before the committee of inquiry of the New York Assembly in 1879, and before a committee of the House of Representatives in 1882. The same idea occurs in railway acts of remoter dates in foreign countries, where the dissimi-

larities of condition have never been as great as in the United States, nor require as frequent mention and consideration.

462 Int. 4. If you answer the last question in the affirmative, state what the phrase was understood to mean by those engaged in the traffic department of the railroad service of the United States?

Ans. to Int. 4. The words "substantially similar circumstances and conditions," and their equivalents, mean generally that in compiling railway freight tariffs, many and diverse conditions and circumstances arise to influence or determine the rates and classifications and the alterations made therein from time to time, aside from the basic principles on which they are constructed, which may be briefed as follows:

1. Railways would not carry any freight if their charges were so high as to leave no profit to shippers. They should not carry freights which do not, all circumstances considered, yield the transporters fair profits, measured by cost of movement, some return upon capital and a proper fund for improvements and depreciation. They must also adapt their tariffs to new producing and commercial conditions.

Railways, therefore, have a ceaseless interest in maintaining and developing the largest tonnage which will produce these results. That they do this, witness the growth of Birmingham, Ala., for example, and the prodigious total tonnage moved throughout the nation at average rates greatly lower than those in foreign countries.

Shippers, *per contra*, have no such mutual interest, and whether the carriers make or lose money, seems not to concern them. Witness the limitations of State laws and the causes cited for the passage of the interstate commerce act.

2. For these reasons and others, railway managers make their tariffs as near uniform on all parts of their lines as like conditions warrant, but dissimilar conditions often justify dissimilar rates. The carriers in sparse countries should enjoy rates above those charged by old-established lines having vast tonnages. If a line be opened into a new and non-competitive country, having only a small traffic, the tariffs are justly adapted to those conditions. As the country becomes settled and productive those conditions change and warrant altered rates. All pioneer roads have passed

463 through this stage of change. Not only do the conditions differ and change on different railroads, but upon the same railroad.

If new competitors open rival routes to through or local points on old lines, or an old rival adopts new methods and tariffs, such new conditions become important and require action. If the changes are lesser, they may be generalized under rules, but each new condition or circumstance attending transportation, from whatever cause, creates in some measure a need for revision.

3. That a railway is entitled to receive cost for its service cannot be gainsaid. That it is entitled not only to such cost but legal rates of interest on a fair capital, should not be combatted.

In so far as a railway company may, for reasons not unjust to the

public, waive any part of its rates above its actual cost of movement, that reduction should be regarded as voluntary and clearly to the public interest, even when such reductions are made temporarily in order to reap a better result thereafter. Iron, coal and other industries are thus fostered at times.

Railroad companies often draw upon this same margin, when needful, to enter into contests to preserve their business or for its enlargement.

4. It is, on the other hand, equitable for railways to base their charges not in all cases upon cost and a reasonable profit, but upon the value of the service rendered to others. This is a just principle, recognized by the anthracite coal producers in the Wyoming, Lehigh and Schuylkill valleys, who pay, as freight charges to the seaboard, certain proportions of the sale prices they realize for their coals. This underlying principle is a fair basis for all tariffs, except that neither the railway nor the forwarder should be expected to continuously accept less than cost.

Within these generalized principles there are leading conditions and circumstances which further determine freight tariffs.

The following are cited:

(*a*.) A rail tariff from Albany to New York, on the Hudson River division of the N. Y. C. & H. R. R. R., competing with boats in every mile, imposes conditions and limitations on that 150 miles of rail which clearly differ from those on the same railway for
464 150 miles west from Albany, where the grades are higher and trains smaller, the road cost more to construct and operate, and where competition differs in character and circumstance.

The rates on branch lines often properly exceed those for similar distances on the main tracks of the same system, otherwise adequate revenues would not be yielded by the smaller business which incurs a greater cost per mile in the movement on the branches, with additional expenses for junction transfers, delays of equipment, insufficiency of return loading, etc.

(*b*.) Railroads also adjust their tariffs not altogether with reference to existing traffics, but to establish new ones. I found, while vice-president of the Erie railway, that hemlock lumber had been cut from a very large acreage, and the idle stump lands no longer contributed freight to us. That railway then found it to its interest to make rates on grain sufficiently low to induce clearing these lands, and many of them are now grain-fields which contribute to the prosperity of their districts as well as the railway.

(*c*.) The official classification embraces about 4,000 articles.

If the "circumstances and conditions" are not unlike upon each article, ranging from pig-lead to feathers, and from bricks to works of art, the dissimilarities actually run into the hundreds. These have been condensed and generalized into a code of six classes and a few rules, for railway and public utility, which undertakes to harmonize dissimilar conditions and circumstances, including varied facility of loading, quality and value of freight, regularity of movement, liability to injury or to injure, character of packages, quantity, risk, weight, length, size, bulk, etc., etc. These conditions

vary in turn on the same articles sometimes in different directions and different parts of the country.

(*d.*) The wide dissimilarities of "circumstances and conditions" upon smaller local traffic, as compared with the larger through traffic, is the principal perplexity of traffic management. If the Erie railway did only a through business, then only where locomotives and men were changed, would stoppages be required.
465 Trains could be loaded to their capacity and run through without break, except those required by variations of grade, and sidings would be required only at relay and terminal points, thus enabling a smaller equipment to move a larger tonnage. That railway, therefore, has 260 stations devoted to local traffic of smaller total volume than the amount handled at its termini. There attach to those 260 stations, side tracks connected with the main line, which increase delays, stoppages and the risks of accident. At these 260 station buildings unnecessary for through traffic, there must be separate agents and individual forces of clerks and laborers.

The aggregate area of lands purchased upon which this large number of sidings and stations are placed would far exceed, if combined at one terminal point, the combined terminal facilities of all the trunk lines at their Atlantic ports.

(*e.*) Given next a train of forty through freight cars, say from Buffalo to New York, at the present average through-freight speed, they would run through in forty hours, and earn, say, $3.00 per ton for the average of the classes for fifteen tons in each car, or $45.00 per car, or $1,800.00 for the train one way. A local train leaving Buffalo with, say, fifteen cars and running into Jersey City with possibly thirty cars, may, upon that journey, pick up and drop 150 cars, requiring 130 hours and more locomotives, wear and tear, yet earning gross not more than the through train did, notwithstanding higher local rates. Reducing the local traffic to 120 cars and the time to 120 hours, against a through train of 40 cars increased to 48 hours, each of the 40 cars would earn $25.00 per day, while the local freight, through, would earn, say, $3.00 per car per day, assuming the detentions of cars at terminal points to be equal, or eight times as much per car per day, without taking the increased expense into the account.

The chairman of a special committee of the senate of Alabama, appointed to consider this subject in 1873, said:

"Ordinarily it requires 24 hours to load a car, and 24 hours to unload it. The average speed of a freight train is ten miles an hour. A car carries ten tons of freight. Suppose the rate to be two cents a mile; if the car is to be moved ten miles, it would require 49 hours, and it would earn for the company $2.00,
466 that is, 96 cents per day. If this same car were to be moved 1,000 miles, it would require 148 hours, and at the rate of freight would earn $32.50 per day."

This presupposes the same rates, per mile, for through and local traffic, but if the local traffic be computed at three times as much, the Senator's illustration would be as $2.88 is to $32.50.

I proved to the committee of the New York assembly, in 1879, and now testify, that the terminal expenses ranged from 17 cents per ton at large points to $4.36 per ton handled at the most expensive local station of the Erie railway.

The justice of specific allowances for this large and costly item of railway expenditure is acknowledged in the recent revision of railway rates in England, effective in August next, wherein Parliament has authorized the railways to make specific charges for station service, to be added, so to speak, to the cost and profit of train movement and administration standing alone. In this country, as cities grow, lands increase in value and are more taxed, and terminal expenses become greater, this item will increase and become more important, although adverse railway legislation may unjustly, or the discovery of economies of mere carriage may, justly, cause the rates to decrease. This is a circumstance and condition differing with each point.

Railways possessing a large and profitable tonnage may, perhaps, afford to ignore the justifiable increases in local rates resulting from these and other causes, and limit their short-haul charges to only through rates. Many other carriers traversing sparsely peopled and producing regions cannot and should not be asked to. This was contended for on this ground and because of water competition, and was recognized in the fourth section of the interstate law, which gives the commission the right to suspend the act in this important respect.

Int. 5. Please explain fully how, or in what respect, the existence of competition between carriers affects the circumstances and conditions under which the transportation of property is conducted?

Ans. to Int. 5. The competition between carriers is always influential, if not potential, and rival transportation must be
467 conducted with reference to the rates, time, condition of handling, which contestants offer, be they in direct or indirect rivalry.

That railway or route which presents the maximum facilities for the minimum of all included costs, presents conditions which its railway rival must conform to or abandon the traffic. For example, a railway operated for 55 per cent. of its gross receipts, may reduce its rates to advantage and with a remaining profit, while the same reduction might constitute an injury and produce a loss to a rival line, whose cost is 75 per cent. If both such lines compete with water routes, the first may profitably enter upon a competition therewith, which the second may feel compelled to decline or continue it only in the public interest, as under such circumstances it would clearly not be to its own advantage. The same general fact is true, where there is no water competition, but where long all-rail or composite lines compete with shorter all-rail routes. Such competition is clearly to the public interest. The Baltimore & Ohio road from Chicago to Boston via Baltimore, thence sea at insured rates, cannot charge more, if as much, for carrying freight between those points as the shorter route of the Grand Trunk system. In some degree, therefore, the trunk lines farthest apart, affect each

other and introduce local as well as through "circumstances and conditions" clearly different from those which would justly prevail, if either one of those routes were the only route. Unjust conditions may also be forced upon one company by another in cases of rates cut for stock-jobbing or other ulterior purposes. The result is not the less disastrous, however, upon all the rivals of such routes.

The New York Central R. R., besides the Erie canal from Buffalo to Albany, and the Lake Shore Company, parallel to the Great Lakes from Buffalo to Chicago, each upon its own local traffic and both as to their joint through traffic, must consider those masterful rivals, and the more, because they enjoy immunity from the interstate act. Any one may put boats upon those waters, and thus compel a modification of the reasonable all-rail tariffs and conditions, which would otherwise obtain. In some measure the
468 owner of a schooner on the Great Lakes plus the owner of a canal-boat on the Erie canal, affect and limit not only the through but the local all-rail rates of all the great railway systems between Chicago and New York, and the rates from Louisville to Harrisburgh being based on those from Chicago to New York, are also affected.

Similarly the all-rail lines from New York to Charleston, Savannah, and New Orleans, cannot make their rates in disregard of the dissimilar "circumstances and conditions" of carriage by sea to those ports, thence rail to interior southern points. The all-rail rate from New York to Atlanta is thus decided by the longer ocean and rail rate between the same points. The ocean influence not only thus penetrates the interior South with varying, but effective force, but as the all-rail rates from New York decide those from Boston, Philadelphia and Baltimore to and throughout the South and West, the ocean influence is yet of farther effect. The same is true of the competition of rail with Lake Erie, the Mississippi river, the Panama route, etc.

Int. 6. Please explain fully how, or in what respect, the existence of competition between markets affects the circumstances and conditions under which the transportation of property is conducted.

Ans. to Int. 6. The competition between markets affects the circumstances and conditions under which property is transported perhaps more than the rivalries of carriers to the same market. When grain from the Black sea was more competitive than now, the prices of American grain delivered in England were largely determined by Russian competition, and the American railways put down their through rates to assist in meeting it. This question cannot yet be altogether ignored, but there seems no reason why this should reduce local rates in America. The same is measurably true with the rates upon cotton from India laid down in Manchester. Witness the present low prices of cotton. It is affected by the excess of the world's supply, and not by the production of one country alone.

The competition between New York, Philadelphia and Baltimore produced one of the most disastrous of railway struggles, and

469 it affected both southern and western railways, including New Orleans, which was not directly involved.

If the adjustments of railway rates from and to various markets were not well considered and reasonably adjusted, they would result in enormous geographical preferences, which would involve individual preferences. For illustration, if the rate on grain from all western points to Baltimore was 10 cents per 100 pounds less than to New York, it would create a transportation and trade revolution which would affect not only Baltimore and New York, but Boston, Portland, Newport News, and Savannah, as well as the grain-producing points. So, also, if Chicago had disproportionately less rates eastward or westward than St. Louis and Milwaukee, it would produce disaster to cities and Commonwealths. The circumstances and conditions have, therefore, been considered and reasonably equalized.

The same grounds hold good of manufactures as well as agricultural products. Formerly, when the manufacturing resources of the West and South were less developed, the eastern manufacturers, possessing abundant water power, capital, mechanical ingenuity and prestige, almost monopolized numerous manufactures. Since, however, western and southern coal mines have been developed, capital has been aggravated, railways have been made more numerous and charge lower rates, etc., the Western States have increased their proportion of the general manufacture to a large extent, and the eastern manufacturers have correspondingly decreased their percentage. Eastern industries have solicited reduced rates to retain their decreased traffics thereto. Witness the almost national effect upon the iron trades of building up Birmingham. This is a striking illustration of the competition of markets.

All these problems and the phases and conditions they create, must necessarily be studied by traffic managers, and their tariffs must be adjusted to them. The mere enactment of the interstate commerce law did not change the thoroughness of that study. It merely emphasized the necessity for considering those conditions in connection with that act and the new terms it used to describe old ideas.

G. R. BLANCHARD.

470 THE INTERSTATE COMMERCE COMMISSION *vs.* CICINNNATI, NEW ORLEANS & TEXAS PACIFIC R'Y CO. *et als.* } In the Circuit Court of the United States, Northern District of Georgia. In Equity. No. 390.

It is stipulated, in the above-entitled cause, that the same shall be heard as if J. W. Thomas, president of the Nashville, Chattanooga & St. Louis Railway Company, lessee of the Western & Atlantic railroad, had testified, subject to the general objection of irrelevancy and incompetency, that it appears from the books of said company, that during the year ending December 31st, 1891, the average revenue received by the Western & Atlantic railroad, on freight per ton per

mile, was nine and seventy-seven hundre-ths (9.77) mills, and that the average cost of carrying freight per ton per mile on said road, was seven and twenty-two hundredths (7.22) mills.

——— ———,
For Petitioner.

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For Defendants.

Atlanta, Ga., April 6th, A. D. 1892.

THE INTERSTATE COMMERCE COMMISSION *vs.* CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY *et als.* — In the Circuit Court of the United States, Northern District of Georgia. In Equity. No. 390.

It is stipulated, in the above-entitled cause, that the same shall be heard as if D. Miller, traffic manager of the Cincinnati, New Orleans & Texas Pacific Railway Company, had testified, subject to the general objection of irrelevancy and incompetency, that it appears from the reports of the Cincinnati, New Orleans & Texas Pacific Railway Company, that the average revenue of said company, on through freights of all classes was 8.2 mills per ton per mile, and of local freights of all classes was 1 cent 2.1 mills per ton per mile. The average cost of handling through freights of all classes was 6.3 mills per ton per mile, and of local freights of all classes was — mills per ton per mile, as appears from said reports for the year ending June 1st, 1891.

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For Petitioner.

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For Defendants.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY *et als.* — In the Circuit Court of the United States for the Northern District of Georgia. No. 390.

In this case, it is stipulated by counsel representing both parties, that on or about October 24th, 1891, Messrs. N. L. Trammell, Allen Fort and Virgil Powers, constituting and composing the railroad commission of the State of Georgia, filed a petition before the Interstate Commerce Commission, against the Clyde Steamship Company, the South Carolina R. R. Co., the Georgia R. R. and Banking Company, the Louisville & Nashville R. R. Company, the Central R. R. & Banking Company of Georgia, (the last two named being lessees of the Georgia railroad), and other railroad companies, averring, (among other things), that the defendants to said petition had theretofore and then did charge and receive more and greater compensation in the aggregate on each class of freight shipped from the city of New York and other eastern points to, the towns and stations of Greensboro', Madison, Social Circle, Covington, Conyers and Stone Mountain, the same being "local" stations on the Georgia railroad,

than they contemporaneously charged and received for like kind of freight from New York and other eastern points, to the city of Atlanta, which is at a greater distance from the city of New York than either or any of said local stations on the Georgia railroad.

472 Said petition charges that said through rates to said local stations on the Georgia railroad, charged and collected by the defendants thereto as aforesaid, were and are unreasonable and discriminating in their nature and are in violation of the fourth section of the act of Congress entitled, "An act to regulate commerce," and said petition prays that the defendants therein may be commanded to cease and desist from said alleged violations of said act.

Said petition has been duly answered by the defendants thereto, a hearing has been had at which testimony was taken upon both sides, but the case has not yet been submitted.

Both parties to this agreement reserve the right to bring in the whole record of said cases; for the better understanding of this agreement, and subject to all objections as to relevancy and competency, it is agreed that this case shall be heard as if a duly certified transcript of the record and proceedings in said case had been filed as evidence in this case, unless either party shall hereafter desire to file such certified copies, which may be done at any time, without prejudice, before the cause is heard by the said circuit court.

A. G. SAFFORD,
Counsel for Petitioners.
ED. BAXTER,
Counsel for Defendants.

INTERSTATE COMMERCE COMMISSION	)	United States Circuit Court
vs.		for the Northern District
THE C., N. O. & T. P. R'Y, W. & A. R. R. CO., and GEORGIA R. R. CO.		of Georgia. In Eq-ity. No. 390.

The following statement of facts is agreed upon between counsel for plaintiff and counsel for The Western & Atlantic Railroad Company, one of the defendants herein.

(1.) It is admitted that the legislature passed an act, approved November 12th, 1889, providing for the lease of the Western & Atlantic railroad.

473 (2.) That the Nashville, Chattanooga & St. Louis railway made a bid in compliance with the agreement of said act, which said bid was accepted, June 30th, 1890, by the State of Georgia.

(3.) That subsequent to said acceptance, to wit: upon the 19th day of July, 1890, a lease of said railroad property was entered into between the State of Georgia and the Nashville, Chattanooga & St. Louis railway.

(4.) That by virtue of said lease, on the 27th day of December, 1890, the said Nashville, Chattanooga & St. Louis railway was put

in possession of said property and began operating the same, signing a receipt of that date for the property.

(5.) That the act authorizing the lease required, as a condition precedent, that the persons or corporations taking a lease of said railroad property should become a body corporate under the laws of the State of Georgia, and should operate said road under the corporate name of the Western & Atlantic Railroad Company, which body corporate shall be operated only from the time of their taking possession of said road as lessees, and that it shall have the power to sue and be sued for any cause of action after the execution of the lease.

(6.) That The Western & Atlantic Railroad, defendant herein, acquired corporate existence by virtue of said act, approved November 12, 1889, the lease in accordance therewith and the putting in possession of said property on the 27th day of December, 1890, which was the date of the possession.

The foregoing is agreed to as a statement of facts to which the same relate, but only applicable to The Western & Atlantic Railroad Company, one of the defendants mentioned.

S. A. DARNELL, *U. S. Att'y.*

474 THE INTERSTATE COMMERCE COMMISSION *vs.* THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY CO. *et als.* | In the Circuit Court of the United States, Northern District of Georgia. In Equity. No. 390.

To the honorable the circuit court of the United States for the northern district of Georgia, sitting in equity:

Your petitioner, The Interstate Commerce Commission, the complainant in the above-entitled cause, respectfully represents that it makes all the prior proceedings in the said cause, a part of this petition, the same not being set forth fully herein, to avoid prolixity.

That it has been made to appear to the petitioner that the Nashville, Chattanooga & St. Louis Railway Company, a corporation created, chartered, and existing under and by virtue of the laws of the State of Tennessee, has become, since the institution of the proceedings before the said Interstate Commerce Commission, which resulted in the order of said commission, which this proceedings was brought to enforce, interested in the subject-matter of the suit, by having become the lessee of the Western & Atlantic railroad, which it has operated since December 27, 1890.

That the defendants are now engaged in taking testimony in said cause, and that if not a necessary party to the proceedings, still your petitioner has concluded that the said Nashville, Chattanooga and St. Louis Railway Company may properly be joined as a party defendant.

Wherefore, the petitioner prays for an order, pending the cause, requiring the said Nashville, Chattanooga and St. Louis railway to appear before this honorable court, by a day certain, to make such

answer as it may be advised in the premises, to make election whether it will adopt the testimony already introduced on the parts of the other defendants, and from this time forth to be governed by all such orders, directions, or decrees, as may be made in
475 this cause, the same as if the said Nashville, Chattanooga & St. Louis Railway Company had been a party to the cause as brought originally.

And for such other relief, by way of amendment of the original petition, as may be necessary and proper to bring said Nashville, Chattanooga & St. Louis Railway Company properly within the case, as stated in the said original petition.

INTERSTATE COMMERCE COMMISSION,

By its solicitor, —— ——.

The Nashville, Chattanooga and St. Louis Railway Company hereby accepts service of the foregoing petition, and consents to be joined as a party defendant in this case, as fully as though it had been made a defendant to the original petition filed therein.

It adopts the answers of the defendants which have heretofore been filed in said case, as well as all the testimony taken, or to be taken for the defendants in this case.

Dated at Atlanta, in the district and State aforesaid, this 6th day of April, A. D. 1892.

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Solicitor for N., C. & St. L. R'y.

The petitioner, The Interstate Commerce Commission, hereby agrees that the Nashville, Chattanooga & St. Louis Railway Company may have the benefit of the answers of the defendants which have heretofore been filed in this case, as fully as though said company had originally joined in said answers; and that said company may have the benefit of the testimony heretofore taken by the defendants in this case, as fully as though said company had been made a party to this case before said deposition were taken.

Atlanta, Ga., April 6th, A. D. 1892.

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Solicitor for the Interstate Commerce Commission.

476 THE INTERSTATE COMMERCE COMMISSION *vs.* THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY CO. *et als.* | In the Circuit Court of the United States, Northern District of Georgia. In Equity. No. 390.

Replication.

This repliant, saving and reserving to itself all, and all manner of advantage of exception to the manifold insufficienc-es of the several answers of the said defendants for replication thereto saith, that it will aver and prove its said petition to be true, certain and sufficient in the law to be answered unto; and that the said several

answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by its said petition it hath already prayed.

THE INTERSTATE COMMERCE COMMISSION,

By its solicitor, —— ——.

It is stipulated between counsel representing all the parties to this cause, that the foregoing replication shall be treated as having been filed as of the day succeeding the filing of the last answer by any of the defendants.

477 Cross-examination of ALBERT FINK:

Q. 1. What difference do you make, if any, in the meaning between the word "circumstances" and the word "conditions," to be found in the phrase "similar circumstances and conditions," discussed by you in answer to direct interrogatory No. 3?

A. I consider the meaning substantially the same, although the word "conditions" may have a broader meaning and would include the meaning of the word "circumstances." I would consider the word "conditions" sufficient to express my meaning without the word "circumstances."

Q. 2. I understand that your report of 1874 contained the words, in speaking of the duties of a common carrier, "he must treat all (shippers) alike that are situated alike." I do not understand that the report contained the words "under the same circumstances and conditions," but I do understand that these last words are now used by you to express what you meant then. Is that correct?

A. Both expressions have, to my mind, the same meaning.

Q. 3. Is it your understanding that the words "under the same circumstances," to be found in the railway clauses consolidation act of 1845, would apply to something beyond the carriage of the goods, and so as to include competition of carrier with carrier or market with market?

A. I understand that it applies to all the circumstances which affect or bear upon the establishment of tariffs, whatever they may be. I cannot understand that it applies to anything else, as the question involved is one simply of tariffs or rates.

Q. 4. In your report you stated that it was the duty of carriers to charge all shippers alike that are situated alike. Would you, at that time, have considered that the shipper of an occasional carload of coal to be so situated as compared with a shipper who shipped 100 car-loads a year and with substantial regularity?

A. I consider that the quantity shipped forms an element in making lower rates on larger quantities than on smaller quantities,

provided, however, that the cost of doing the work per unit
478 is diminished when larger quantities are shipped. The relative cost of transportation forms one of the conditions legitimately determining the rates in such cases.

Q. 5. That is, the car-load has for a great many years been recognized as the unit of freight transportation for making rates, has it not?

A. Not exactly; the basis of railroad transportation charges is generally the weight per hundred pounds or per ton of the goods transported, but a distinction is made between car-load and less than car-load shipments, and also sometimes between car-load and train-load shipments. Rates are often made on car-loads as a unit, the load being limited to a certain number of tons per car.

Q. 6. Suppose one shipper offers a car-load of coal for transportation once in six months, and another shipper offers two car-loads of coal every week. In your estimation, would the two shippers be situated alike within the meaning of these words as you use them in your report of 1874?

A. If the cost of transportation in both cases is the same, I consider both parties as being situated alike. If the cost of shipping the larger quantity is less, I consider that they are not situated alike.

Q. 7. I understand this to be your opinion. How was it considered by other persons connected with railroad management at the time of the passage of the law? Were there not a great many railroad men who considered that transportation of the two kinds spoken of in the question was transportation under substantially dissimilar circumstances and conditions?

A. I believe that the general impression was and is that a great many car-loads regularly shipped as above explained could be shipped for less than scattered small shipments, and therefore under dissimilar circumstances from the smaller shipments.

Q. 8. In your answer to direct interrogatory No. 4, you have mentioned very many elements or factors which enter into or have entered into the making of rates. Among them you have mentioned the cost of transportation, the value of the service to the shipper, the fact of competition, that is to say, competition between carrier and carrier and competition between market and
479 market. I suppose all the innumerable elements which affect rates may be classified under one of these three heads, that is to say, cost of transportation, value of service, and competition? Is that your opinion?

A. They are the principal ones, but there may be others. Those named are, however, the most influential.

Q. 9. If I understand you, the difference in the cost of transportation, the difference in the value of the service, and the effect of competition of the kinds mentioned, make a dissimilarity of circumstances and conditions such as warrants a difference in rate. Is that correct?

A. Yes, sir; these are the principal conditions influencing the establishment of tariffs.

Q. 10. You speak in your testimony of the value of the service to the shipper as forming one element or factor in the making of rates. Is not that element or factor in practice very largely included in what you have termed competition?

A. Yes, indeed; overborne by competition between carriers in many cases.

Q. 11. Then, if I understand you, the value of the service very frequently depends upon the effect of competition, does it not?

A. Yes, sir.

Q. 12. Before the passage of the law, was it the practice of railroads very generally to make a higher rate for a shorter haul when the transportation was in the presence of competition?

A. Yes, sir; when the competition was sufficient to make it necessary.

Q. 13. I desire to call your attention to the statement of Mr. E. P. Alexander in his book on Railway Practice, page 14, where he says, in regard to the short and long haul rates of railroads, that "no railroad practice or abuse has ever brought up more violent and indignant protest than this." Was this statement of Mr. Alexander historically correct as of 1887, when the book was published?

A. Mr. Alexander is correct in his statement. The cause of this abuse largely arose from the fact that the railroad com-
480 panies were fighting each other, making unreasonably low rates, which brought out in great contrast the higher rates on local and short-haul traffic and the low rates on long-haul competitive traffic.

(Last sentence objected to as not responsive.)

Q. 14. You speak of competition of carrier with carrier and competition of market with market as affecting rates. Which of these two different kinds of competition, in your experience, has had the greater effect upon rates?

A. In most cases they are so blended together that it is very difficult to say which is the more prevailing one, but there are cases in which the one prevails, and cases where the other prevails, but in many cases they exercise their influence jointly and together. Where there is no competition, the market value has the greater influence. For example, in the case of the local business of a road, take the distillery at New Haven, Ky., forty miles from Louisville, where there is no competition between carriers; they have to market their products in competition with the whiskey manufacturers in Louisville, and the rates between New Haven and Louisville have to be adjusted to enable them to do so. The same may be said of most of the local business of a line of road that is not influenced by direct competition with other carriers. The rates have to be adjusted according to the value of the service, so that both the shippers and the railroads can do the business.

Q. 15. As affecting rates under circumstances where the greater rate is charged for the shorter haul, do you now recall an instance, before the passage of the interstate commerce law, where the greater

rate was made for the shorter haul except where there was competition between carriers at the more remote competing point, either alone by itself, or joined with competition of market with market?

A. It is very difficult to draw the line between competition between carriers and competition of market with market. Competition of market with market may be affected again by competition of carrier with carrier. For instance, there are cases known where the rate on cotton to Boston from certain American points has been more than the rate to Liverpool from same point, which
481 I believe is the result of competition of markets, the market price of cotton in Liverpool controlling the price generally in America. The market price in Liverpool, depending principally on demand and supply, may be said to be also influenced by the competition between carriers from the East Indies, Egypt, etc., to Liverpool, but whatever may be the cause, the rates from interior points in America on cotton to Liverpool have to be adjusted with a view to the market price of cotton in Liverpool.

Q. 16. Before the passage of the law, do you now recall an instance where the greater rate was given for a shorter haul except where there was competition at the more remote competing point?

A. I cannot recall any cases. As a rule, the railroad companies never make any lower rates to distant points than to nearer points except where they are obliged to do so by competition. They have no motive to make lower rates to more distant points than to nearer points except when forced by the circumstances and conditions of competition at the farther points.

Q. 17. You have spoken of competition. I desire to call your attention to the definition by Professor Hadley of competition, page 63 of his book on Railroad Transportation, where he says "Competition is the effort of rival sellers to secure a market for their goods, each striving to offer better terms than his competitors. Competition is what prevents one individual from fixing the price to suit himself, because his rivals will give lower prices, and he will get no business at all." Are you willing to adopt that definition of competition as applied to railroad transportation?

A. I do not see any objection to this definition of competition. Perhaps it is not general enough. There is other competition besides competition in prices; there is competition in facilities, in transportation, accommodations, etc., etc.

Q. 18. The object, or one of the objects of the organization and continuance of railroad associations such as the Trunk Line Association, of which you were commissioner at one time, and of the Southern Railway & Steamship Association, which now exists in this
482 territory, is to do away with that competition which would drive the transportation to too low a point and to provide by co operation for the maintenance of what are considered to be reasonable rates, is it not?

A. The main object of these associations is to establish joint and uniform tariffs for a number of individual roads, and to maintain said tariffs. The object is the same as that of the interstate com-

merce law. That law could not be carried out without the assistance of these associations to establish joint and uniform tariffs. If each road were to make its own tariff, different and independent of its competitor, the result would be unjust discrimination—forbidden by the law.

Q. 19. And to bring that about, each road surrenders, during the time of its membership in the association, its individual power to make rates, does it not?

A. I cannot say that it surrenders that power, because it is one of the parties that exercise it jointly with the others. It has a voice in making the rates, and, as a rule, agreements as to rates are formed voluntarily, and not by compulsion. The railroad companies in the Trunk Line Association do not require a member to make any higher rates than that member desires. The company desiring to make the lowest rate controls the rate-making.

Cross-examination of M. H. SMITH:

Q. 1. Has your railroad experience been principally in the territory south of the Ohio and east of the Mississippi river?

A. My employment has been with railroads located mainly south of the Ohio and east of the Mississippi river, with the exception of three years, when I was in the employ of the Baltimore & Ohio and Pennsylvania railroads; but my duties while employed by roads south of the Ohio and east of the Mississippi river have necessarily made me quite familiar with the traffic of roads north of the river and east of St. Louis and Chicago, for the reason that the roads with which I have been connected have intimate traffic relations, either as friendly connections or as competitors with such railroads.

483 Q. 2. How long have you been connected with the Louisville & Nashville Railroad Company?

A. From 1866 to 1878, and from January, 1882, to the present time.

Q. 3. The Louisville & Nashville railroad, through its connections, makes a line between Cincinnati and Atlanta, does it not?

A. Yes, sir.

Q. 4. Is your present rate on first-class goods in less than car-load lots from Cincinnati to Atlanta $1.07, to Social Circle $1.37, and to Augusta $1.07?

A. I do not know from my own personal knowledge, but I can ascertain. I believe, though, the rates you name are the rates upon property classified as first-class in any quantity.

Q. 5. The Louisville & Nashville Railroad Company is a member of the Southern Traffic Association, is it not?

A. The Louisville & Nashville Railroad Company has been a member of the Southern Railway & Steamship Association for only a short time—for the past three or four months.

Q. 6. It is now?

A. Yes, sir.

Q. 7. And as a member of that association it is under agreement with the line formed by the defendants to maintain rates between Cincinnati and the points in Georgia I have named, is it not?

A. The Louisville & Nashville Railroad Company necessarily endeavors to agree upon uniform rates with competing lines between all points, and has, for many years, endeavored to secure the adoption and maintenance of uniform rates from Cincinnati to Atlanta and other points in that territory. These efforts are always made whether the Louisville & Nashville Railroad Company, or competing lines are or are not members of the Southern Railway & Steamship Association. We endeavored to secure the adoption and maintenance of agreed rates when we were not members, or before we became members of the association.

Q. 8. The question was directed to the fact as to whether,
484 through the medium of the Southern Railway & Steamship Association, you were not at the present time in agreement with the defendants to maintain rates now existing between Cincinnati and points in Georgia named.

A. The Louisville & Nashville Railroad Company is working under the same arrangements and agreements now, as a member of the Southern Railway & Steamship Association, to adopt and maintain uniform rates that were in effect before it became a member of the association.

Q. 9. Am I to understand your answer as confirming or denying the fact that the Louisville & Nashville Railroad Company is at present under agreement with the defendants to maintain rates between Cincinnati and the points in Georgia I have named?

A. The Louisville & Nashville Railroad Company is at present, so far as I know, soliciting transportation of traffic from Cincinnati to Atlanta and other points in that territory at the published tariff rates, and those rates are supposed to be uniform with those of competing lines, or defendants named in the bill, soliciting the transportation of property between same points.

Q. 10. That might be true in the absence of an agreement between your company and the defendants. My question is directed solely to the fact of an agreement between your company and the defendants to maintain the present rates for freight between Cincinnati and the points in Georgia named.

A. The adoption and maintenance of uniform rates between competing points necessarily involves an agreement. Uniform rates between competing lines, on a large and miscellaneous traffic, could not be adopted except by agreement.

Q. 11. You are familiar, of course, with the situation of railroad transportation between Cincinnati and these points in Georgia, and are aware that the defendants charge the same rate to Atlanta that they do to Augusta, and 30 cents higher rate to Social Circle than they do the nearer point, Atlanta, upon first-class property, are you not?

A. I believe the figures you give are correct.

Q. 12. And I suppose that you have a great deal of traffic
485 over your own line which is similarly situated as to the greater charge for the shorter haul, have you not?

A. The Louisville & Nashville Railroad Company has continued to adjust rates to and from what are termed local or intermediate

stations upon practically the same basis that was in use before the enactment of the act to regulate commerce. The management has always claimed that the basis of adjusting its rates in effect prior to the enactment of the act just referred to, was substantially in accordance with the terms of the act; that the rates so adjusted were not greater for a shorter than for a longer distance for the transportation of like kind of property under similar circumstances and conditions. It has continued to adjust rates, charging more for transporting property for shorter than for longer distances where the circumstances and conditions were dissimilar.

Q. 13. Does not your company, at the present time, in very many cases, make a greater charge for the shorter haul in presence of competition of various kinds, of which you have spoken, and which, in your opinion as expressed in answer to fifth interrogatory, affects the circumstances and conditions of the transportation?

A. The company adjusts its rates to and from local or intermediate stations on the basis of its local tariff, which, in many cases, results in charging more for property shipped to and from such intermediate stations than to and from competitive points beyond?

Q. 14. And, therefore, a decision of the courts preventing the continuance of that practice would very seriously disturb and disarrange the present method of transacting business by your company, would it not?

A. The absolute enforcement of a rule preventing the charging of more for the shorter than the longer haul, under all circumstances and conditions, would disastrously affect the traffic of the Louisville & Nashville and nearly all of the railroads south of the Ohio and east of the Mississippi river-. It would necessarily result in compelling many of the roads to practically withdraw from
486 the transportation of competitive traffic, as, in many cases, the loss from a reduction of the rates received for the transportation of property to and from intermediate points to the highest rates that can be secured upon competitive traffic would be so much greater than the loss resulting from withdrawing or declining competitive traffic that the management would necessarily be compelled to adopt the course that involved the least loss. In my opinion a strict enforcement of such an adjustment would result in the bankruptcy of the Louisville & Nashville Railroad Company, and at least some, if not the most of the other companies operating railroads in the territory south of the Ohio and east of the Mississippi river-.

Q. 15. You say under all circumstances and conditions. Would that result follow, in your opinion, if the circumstances and conditions were the same as those circumstances and conditions, as you understand the meaning of those words to be, as applied to the traffic between Cincinnati and Atlanta and other Georgia points named in my previous questions?

A. By the term "all circumstances and conditions," I meant the enforcement of an adjustment that under no circumstances should a carrier be permitted to charge more for the transportation of "like kind of property for the shorter than for the longer distance, over the same line, in the same direction, the shorter being included in the

longer distance." I assumed that if it be decided that the lines from Cincinnati to Social Circle cannot legally charge more than it receives for the transportation of like kind of property from Cincinnati to Augusta, that the same rule would apply upon shipments from Cincinnati, say to Franklin, Ky.; in other words, that the Louisville & Nashville Railroad Co., would be prohibited from charging more to Franklin, Ky., than is charged to Nashville, for like kind of property, or more for the transportation from Cincinnati to Tullahoma than from Cincinnati to Chattanooga.

Q. 16. Therefore, you, as the representative of the Louisville & Nashville Railroad Co., feel that you have considerable interest in bringing about in this case such a determination of the question involved as will not interfere with your present method of doing business, do you not?

487 A. The Louisville & Nashville Railroad Company, owning the line from Cincinnati to Nashville, and being largely interested as part owner and joint lessee of the line from Nashville to Augusta, is directly interested in the question involved; but, as I have already stated, a decision in this case to the effect that the lines from Cincinnati to Social Circle cannot legally charge a higher rate than it may receive for the transportation of like property to Augusta or to Charleston, would necessarily apply to the adjustment of rates to all points similarly situated; in other words, its effect would be to absolutely prohibit charging more for the transportation of property for the shorter than for the longer distance, which, as I have heretofore stated, would, in my opinion, result in bankruptcy of the Louisville & Nashville Railroad Company.

Q. 17. If I understand your answer to the fifth interrogatory, in your estimation, and as you testify in regard to "circumstances and conditions," you consider that those words do not apply to the "actual physical movement of the property." Am I right about that?

A. What I was endeavoring to elucidate in my answer to direct interrogatory No. 5 was that physicial conditions alone did not govern in fixing the rates of transportation between competitive points—that the value of the transportation to the owner of the property passing between competitive points was the lowest rate made by any of the competing lines, and that a competing line, laboring under physical disadvantages, such as increased length of line, heavy grades or increased cost of construction, could not secure transportation of property at any rate greater than could be secured from competing lines not subject to such physical disadvantages.

Q. 18. Do you have in mind the distance between Cincinnati and Atlanta via the line of the defendant roads?

A. The distance from Cincinnati to Atlanta via the Cincinnati Southern and Western & Atlantic railroads is, approximately, 474 miles, and by the Louisville & Nashville, Nashville & Chattanooga and Western & Atlantic, 584.

Q. 19. And, approximately, the rate per ton per mile at

488 $1.00 per hundred pounds, from Cincinnati to Atlanta, would be 4.3 cents, would it not?

A. Yes, sir.

Q. 20. You have spoken of competition between markets and competition between carriers as effecting rates at competitive points. Do you consider Atlanta to be such a competative point as to Cincinnati business?

A. Circumstances and conditions have, for many years, rendered the transportation of property to and from Atlanta intensely competitive, not only as between lines competing between the same points, but also as between competitive markets; and, in many cases, the competition of product with product has been a potent factor of competition.

Q. 21. And how much per ton per mile above 4.3 cents do you think the rate on first-class property would be increased in the absence of competition of the kinds you have named?

A. If there was no competition of any kind for the transportation of property to and from Atlanta, the rates on all articles, or most articles described in the tariffs as first class, could be advanced to the sum of the local rates of the carrier or carriers forming a line between point of shipment and Atlanta.

Q. 22. And do you think such an advance would be a just and fair treatment of the shippers under those circumstances?

A. The case referred to is a supposititious one. The facts are that under existing conditions, no serious injustice is inflicted upon any point in the territory south of the Ohio and east of the Mississippi river- by the exaction of rates based upon the local tariffs. The territory is so surrounded and penetrated by water-transportation lines that the adoption of local rates from the various competitive or distributing points in the territory, upon what is termed first-class traffic, does not result in unreasonable and unjust rates, or rates that prohibit the free movement of such property.

Q. 23. Take the movement of first-class property between Cincinnati and Atlanta as it now exists, and assume for the purpose of this question, that the average cost per ton per mile of moving the entire traffic of the roads between those two points to be
489 6.5 mills, do you not think that a rate which yields 4.3 cents per ton per mile to be fairly remunerative to the carrier?

A. The property described as first class may be assumed to be desirable traffic for a long haul at a rate of 4.3 cents per ton per mile regardless of what the average cost of transportation may be, provided competition, or other conditions, do not permit of the securing of a higher rate. In my opinion, the first-class rate from Cincinnati to Atlanta, and other points similarly situated, should be higher than they are, and could be made higher than they now are without injury to the interests of any; provided the numerous competing lines could agree to adopt and maintain such advanced rates between Cincinnati and Atlanta and corresponding advances in rates from all competing markets, including seaboard cities.

(Answer objected to.)

M. H. SMITH.

Cross-examination of JAS. F. GODDARD:

Q. 1. Is the present situation of lines of transportation between New York and Atlanta a fair illustration of what you mean by competition of carrier with carrier?

A. Yes.

Q. 2. Suppose there were to be but one line between New York and Atlanta and one line between Cincinnati and Atlanta. A commodity is offered at New York for transportation and the same commodity is offered at Cincinnati for transportation, bound to a common market at Atlanta. Would that be a fair illustration of your view as to competition of market with market.

A. It is an illustration, but not full.

Q. 3. Suppose an article manufactured in New York is offered for transportation to Atlanta and the same article manufactured in Cincinnati is offered for transportation from that point to Atlanta. There being no competition between the carriers, would you consider that to be a case of competition of market with market?

490 A. It would come under the general term of competition of markets.

Q. 4. Do you now recall any instance prior to the passage of the interstate commerce law in February, 1887, where the greater rate was charged for the shorter haul except in the presence of competition of one of the two kinds above referred to?

A. I cannot from memory recall a case of that character.

Q. 5. But before the passage of the law, the practice on the part of the railroads to get the greater rate for the shorter haul was a very common one and characterized the business of nearly all of the rail carriers did it not, where the business was transacted under circumstances and conditions of competition such as above mentioned?

A. There were, doubtless, cases of the kind referred to, the practice varying in degree upon different lines of railroads.

Q. 6. In your observation has it been the practice of the railroads to charge such a rate for the longer haul as would not be fairly remunerative. I am aware of exceptional cases where the contrary is true, but was it not generally the practice of railroad companies to make such a lesser rate for the longer haul as would be fairly remunerative considering the amount of traffic?

A. With the exception of periods during which what might be termed rate wars prevailed it may be generally stated that the lesser rates made by railroad companies were at least intended to pay them a small margin of profit above the actual cost of haul.

Q. 7. Which kind of competition, in your experience, has the most frequently been the cause of the greater rate being charged for the shorter haul?

A. As between the two classes of competition mentioned, I should say competition between carriers.

Q. 8. And quite generally where the competition between markets

has affected the rates, there has always been present the fact of competition between carriers, has it not?

A. I think that is generally true?

Q. 9. Do you now recall an instance where competition of markets alone and without competition between carriers has been the reason for making the greater rate for the shorter haul?

491 A. I do not now recall such an instance.

Q. 10. Prior to the passage of the interstate commerce law was the fact that if one shipper offered an occasional car-load for transportation and another shipper offered many car-loads for transportation and with substantial regularity, considered by railroad officials to be such a difference in condition and circumstance as to the service rendered to the two different shippers as would warrant a difference in rates?

A. I have no doubt the volume of traffic was considered by many railroad officials as creating a dissimilarity of conditions which led to different rates.

Q. 11. Suppose a line of railroad be 100 miles long, stations "A" and "B" being the termini. Suppose a shipper at "A," "A" being the interior point, received his coals by land conveyance and at the same time the shipper at "B," "B" being a point where the shipper from that point received his coals by water at a less expense than the shipper at "A" was able to receive his coal. In such a case was the fact that the shipper at "A," whose coals cost him more than the coals cost the shipper at "B," there being for that reason a difference in the market price of the coals in the two places, considered to be a difference in circumstance and condition such as would warrant the giving of a better rate per ton per mile to the shipper at "A" than to the shipper at "B"?

A. While I have not a specific case in mind to serve as an illustration, I have no doubt that the conditions which you state would be considered as coming under the general characterization of dissimilar conditions.

Q. 12. Suppose the cost per ton per mile of handling all the freight of a given railroad during a year to be six and one-half mills and the average revenue from the same amount of business to be eight and one-half mills per ton per mile, would a rate of three cents per ton per mile on first-class freight in less than car-load lots be unreasonably low in your opinion, the haul being about six hundred miles?

A. It is difficult to answer a question of this character, as
492 so much depends upon the volume of traffic, the proportion of first-class to the other classes of traffic hauled, etc.

The first-class rate from New York to Chicago is today seventy-five cents per hundred pounds, which is approximately one and one-half cents per ton per mile. The first-class rate from Chicago to Kansas City is, I believe, seventy-five cents per hundred pounds and the distance about four hundred and sixty miles, or a little over three cents per ton per mile. The first-class freight rate from Kansas City to Denver is one dollar and sixty cents and the distance about six hundred and forty miles, or about five cents per ton per mile.

All of these rates being presumably reasonable the differences result largely from the difference in the volume of traffic carried in the different sections.

Q. 13. During the past few years the railroad companies have very generally organized their business and made their rates through the intervention of associations such as the Trunk Line Association, of which you are commissioner, have they not, and these associations practically control the rate-making for the whole country, do they not?

A. It is true that probably the larger portion of the all-rail traffic carried by railroad companies in the United States is transported by railroads which are members of some one of the different traffic associations. These associations are voluntary organizations, and while they do not in all cases control the rates, they have a large influence in guiding them and preventing discriminations which are always liable to result from individual action.

Q. 14. That these railroads belong to these associations substantially prevents the carriers going into the market and underbidding each other as to rates, does it not?

A. The general provisions of these associations being that competitive rates of transportation shall be made by agreement between the lines, they unquestionably result in the direction indicated by the question.

JAS. F. GODDARD.

493 Cross-examination of W. H. NEWMAN:

Q. 1. You have spoken of competition of carrier with carrier, and the effect of that kind of competition upon the making of rates. You have also spoken of the competition of market with market, and the effect of that kind of competition upon rates. Which of these two different classes of competition, in your experience, has had a greater, or been more often the cause of making a change in rates?

A. I should think the competition between carriers has more frequently been the direct cause of changes in rates, but this character of competition is often the result of competition between markets.

Q. 2. Has it not been your experience generally that both of these factors have been present where competition has effected a change in rates?

A. It is generally the case that the cause of the competition can be traced to both of these factors, each of them having its influence thereon either directly or indirectly. There are many cases where the competition of carriers is not considered in fixing the rates, and the effect of the adjustment on the several markets competing for the business is the governing factor, and equally as many where the competition of markets is not taken into account.

Q. 3. Do you recall an instance in your own experience where the competition of markets alone, and disassociated from competition of the carriers, has had the effect to reduce a rate?

A. Yes, I have known instances of that kind. When the Mis-

souri, Kansas & Texas road completed its line through from Missouri and Kansas to Denison, Texas, it was practically without a competitor for the carriage of grain to the consumers in northern Texas. While there was some corn grown in that portion of Texas there was not enough to supply the demand, and the rate at which it was carried by the Missouri, Kansas & Texas Company was governed largely by the difference in price between the markets where the corn was grown in Kansas and the markets where it was
494 consumed in northern Texas. As the production of corn increased in Texas the rate for its transportation from Kansas was year after year gradually reduced.

Q. 4. Are you familiar with the situation of the different lines of carriers between Cincinnati and Atlanta and Augusta?

A. I have only a general knowledge. I have never been directly connected with lines operating in that section of the country. I know there are several different lines between Cincinnati and Atlanta.

Q. 5. If you should ascertain that the cost to the carriers of hauling all of their freight averaged six mills and one-half per ton per mile, and the average revenue was eight and one-half mills per ton per mile between Cincinnati and Atlanta over any one of the different lines, would you consider that a rate of four cents and three mills per ton per mile on first-class freight in less than car-loads was dictated by competition of carriers or by competition between markets?

A. It would be difficult, if not impossible, to determine this without knowledge of the local surroundings, and the causes which governed the carriers in fixing the rates between the places named.

Q. 6. With any of the roads with which you have been associated during the past five years, do you now recollect a rate so high as four cents and three mills per ton per mile on first-class goods in less than car-load lots where the haul was 500 miles?

A. The rate on first-class freight from St. Louis, Missouri, to Wichita, Kansas, via the Missouri Pacific, the St. Louis & San Francisco, and the several routes from St. Louis to Wichita through Kansas City is now, I believe, $1.15 per 100 pounds, which yields substantially a rate per ton per mile of a little more than four cents and three mills, as the approximate distance between these points is a little less than 500 miles. Other points west and northwest of Wichita in Kansas, would show substantially the same rate per ton per mile on first-class freight from St. Louis, and, I think, the present rate from St. Louis over the several routes to Texarkana, Arkansas, or Paris, Texas, will show as much per ton per mile.

495 Q. 7. Do you not consider the value of the service to the shipper to be the controlling factor in the making of rates?

A. I do not think that the value of the service to the shipper can be considered as the controlling factor in making rates. There are so many things which have bearing on this, such as the cost of service, character and quantity of traffic to be moved, kind of equipment to be provided, competition between carriers and between markets, and other considerations too numerous to recite, that it is

impracticable to determine what is in all cases to be considered as the controlling factor. As a rule, if the value of the service to the shipper was taken as the controlling factor in making rates, the traffic carried by railway companies would be greatly restricted, as the shippers could not use the railways to any great extent under the rates this basis would warrant, as all considerations which now govern the making of rates would be eliminated, and the tariffs would be adjusted under the rigid rule of what the traffic would bear when viewed under the value of service rendered to the owner of the property. Under such a rule the cost to the farmer of hauling his grain any given distance via wagon or other mode of conveyance, would be the rate to be fixed for its transportation by rail regardless of what would be fairly remunerative to the carrier.

Re-examined by Mr. BAXTER:

Q. 1. You have been asked, upon cross-examination, as to the reasonableness of a rate of four cents and three mills per ton per mile on first-class freight from Cincinnati to Atlanta. In arriving at what is a reasonable railroad rate upon any particular class of freight between any two points, please state what elements in your opinion should be considered.

A. It is utterly impossible to recite all that should be considered in determining what is a reasonable rate upon any particular class of freight between any two given points. Some of the elements which should be taken into account are as follows:

The value, that is the cost or market price, of the article to be carried.

The volume to be handled.

496 Determination whether it is to be loaded and unloaded by owner, or if to be handled at either or both termini by the carrier.

The amount to be transported in any given time, and whether it is to be transported in car-loads or small lots.

Whether the cars are to be loaded both ways or in one direction only.

The general movement of business over that portion of the line over which the freight is to be carried, and the amount that can be carried in a train, which is determined by the grades, curves and other physical features of the line.

Risk of loss or damage.

Value of the service to the owner.

Approximate cost of the service to the carrier.

Distance to be hauled.

Character of the commodity, whether bulky and light or compact and heavy.

Restrictions as to time in transit, as in the case of live stock and perishable goods.

Character and population of the country traversed.

W. H. NEWMAN.

Cross-examination of OSCAR G. MURRAY:

Q. 1. Do you recognize any difference in the words "circumstances" and "conditions," as applied to the transportation of property, as these words are used in the interstate commerce law?

A. I do not.

Q. 2. According to your experience, what is the basis of making rates? Is it upon the basis of the actual cost of service, or upon the basis of the value of that service to the shipper?

A. Primarily, the cost of the service, as nearly as it can be ascertained is the principal factor in making rates for the transportation of property; secondarily, the value to the shipper of the service rendered in transporting such property exercises a material influence in determining the figures. The above conditions are materially affected from time to time by the quality of competition of carrier with carrier, or market with market, which it may be necessary to consider in determining the tariffs.

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Q. 3. And do you consider that any element which changes the value of service to a shipper operates as such a dissimilarity of circumstances and conditions as to authorize a dissimilarity of rate, as you have used those words "conditions and circumstances" in your testimony?

A. The value of transportation services to the shipper or consignee by reason of the difference in time, the difference in the character of the service rendered, the difference in terminals, and other physical conditions which may be to the advantage or disadvantage of the shipper, create different circumstances and conditions, as I look at it, between different companies, which sometimes justify different rates.

Q. 4. Before the passage of the interstate commerce law was it the practice of railroad companies, in the presence of competition, to charge a greater rate for a shorter haul?

A. It was generally the custom of all roads in meeting competitive rates at competitive points to disregard the rates which applied at local or intermediate points, where the haul was shorter. It, however, became frequently necessary to reduce under such circumstances the rates to intermediate or shorter-haul points by reason of a combination of rates based upon lower competitive figures.

Q. 5. In speaking of competition in your last answer, do you mean to include both the questions of competition of carrier with carrier and that of market with market?

A. My answer to the previous interrogatory covers both the question of competition between markets and carriers.

Q. 6. Is it not your observation that competition which has resulted in a lower rate for the longer haul has generally been caused by competition of carriers?

A. Yes. The strife between rival transportation companies to secure traffic to themselves as against others is to a very large extent the reason of reduced rates which prevail at competitive points.

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Q. 7. In your experience is it not generally true that competi-

tion between markets is associated with competition between carriers?

A. It is in my opinion to a very large extent that the competition arising from these two causes is in a great majority of cases of the same nature.

Q. 8. Were all of these questions of competition between carriers and competition between markets quite as potent in their effect upon rates before the passage of the interstate commerce law as at the present time?

A. Yes. I think their effect upon rates before the passage of the interstate commerce law was fully as strong and of the same degree as they are at present, and quite as well recognized.

Q. 9. It is true, is it not, that the railroad companies competing for business in the territory south of the Ohio river and east of the Mississippi river very generally are governed by the rules of the Southern Railway & Steamship Association?

A. I understand that practically all of the lines south of the Ohio river and east of the Mississippi river are members of the Southern Railway & Steamship Association, and that it is the medium through which rules, rates, classifications, and other principles determining the charges upon their traffic and the manner of handling the same are agreed upon, and they govern in the movement and control of their competitive business.

Q. 10. And this fact to some extent prevents what might be termed to be very ruinous competition between carriers who serve points in that territory?

A. I certainly think so, and understand the principle, and what might be said the only object of the association is to determine upon, by agreement, such rates and rules controlling their traffic as will prevent ruinous competition, to enable the roads to secure a fair remuneration for the service they render.

Q. 11. That is to say, the different carriers having lines into that territory are not in the market underbidding each other for rates, but on the contrary have agreed to belong to an association whose avowed purpose is the maintenance of reasonable rates. Is not that your understanding of it?

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A. While I have no personal knowledge of the matter, that is my understanding of the object of the association, and the reason the roads combined in that organization; and the purpose they seek is to enable each to preserve the rates they establish to and from different territory traversed by their roads.

OSCAR G. MURRAY.

Cross-examination of J. C. STUBBS:

Q. 1. In your answer to the third direct interrogatory, which was directed to the fact as to whether the phrase "under substantially similar circumstances and conditions," (the words found in the second and fourth section- of the interstate commerce law), as connected with the railroad transportation of passengers and property, was, at and prior to February 4th, 1887, a railroad-traffic term, you

have said that the idea or principle expressed by the phrase was always recognized and employed by railroad-traffic men, and following that statement on your part is given the words from the report of the commissioner of transportation for the State of California. Do you know of any use of any phrase any nearer to the phrase about which you were interrogated than the one you have given in your answer to that interrogatory, at and prior to the passage of the interstate commerce law?

A. I do not believe I can answer yes or no to that question, for the reason that I may have frequently employed the expression, or have often heard the expression used by railroad-traffic men to express certain ideas or principles; that is to say, I understand the expression as it is employed in the interstate commerce act to have reference to the charges for transportation, and I cannot now conceive of any conference, or conversation, or discussion between, or consideration by, railroad-traffic men of a tariff of charges for transportation in which they failed to consider, discuss or talk about the circumstances and conditions which surrounded the traffic which was the subject of the rates and charges under discussion. They may, in such discussions or conversations, have used the precise language of the law, and they may not have done so.

Q. 2. My understanding of that question, which may possibly be incorrect, is as to your knowledge of whether that association of words, namely, "under substantially similar circumstances and conditions," as connected with railroad transportation of passengers and property, was at the time mentioned a railroad-traffic term. To make the matter clear, I ask you: Have you any recollection of those word—not words of similar import, not words recognizing the principle of which you have spoken, but those very words—having been used prior to the passage of the act?

A. I have not.

Q. 3. Do you recall any instance in any law or otherwise, in which the words "the same conditions" were used?

A. I cannot at this moment recall any such law.

Q. 4. In point of fact, those words "the same conditions" do appear in the English railway clauses act of 1845, section XC. Do you remember, now that your attention has been called to these words of the English law, to have ever examined that statute and the decisions of the English courts as to the meaning of the words last given?

A. I have never examined the statute in question nor any decisions of a court thereupon.

Q. 5. If I understand your answer to this third question it is that while those words were not used, they convey to your mind the recognition of a principle which you knew in one instance, and possibly in a great many others, to be recognized by a different set of words meaning the same thing. Is not that the correct understanding of your answer?

A. I would hardly like to adopt it as a full expression of my meaning. I would not be able to testify that the phrase in ques-

tion was a technical term in the sense of always having been used by railroad men to express the idea or principle which it conveys to my mind, and yet I am not able to say that previous
501 to the passage of the law, the use of the exact term was not common with myself and other men following the same pursuit in life. Since the passage of the interstate commerce law it has been so uniformly adopted and universally used that I should think it would be difficult for anybody to say whether its use grew out of its adoption in the law or it existed before the law.

Q. 6. The fourth direct interrogatory, as I understand it, required you to state what the meaning of the term was, if you answered the third interrogatory in the affirmative. How are we to understand your answer to the third interrogatory, as having been in the affirmative or negative?

A. While my answer is not, and I do not believe it could be made categorical, I think it leans strongly to the affirmative side.

Q. 7. Still as an affirmative proposition you would not want to say that the phrase "under substantially similar circumstances and conditions"—I mean those very words—had an established meaning among persons controlling the transportation of passengers and property for carriers?

A. Yes, I would say that the phrase "under substantially similar circumstances and conditions," when used by railroad-traffic men, had an established meaning.

Q. 8. You mean, do you not, that the phrase would have had a meaning if it had been used, and not that you ever knew of those exact words having been used.

A. I could no more say that previous to the passage of the interstate commerce law, that exact phrase was always used, than I could say that railroad-traffic men always used the term, "freight," as meaning the property which railroads transported, or the money paid for transportation of the property. The word was used in both senses, and always depended upon the context for its definition. As I have said before, the phrase might have been, very likely was, often used by myself and others, and yet, to pin me down to swear that it was uniformly used to the exclusion of other words meaning the same thing, is not possible.

Q. 9. In your answer to the fourth direct interrogatory, in speaking of the term, you say that by traffic men "it is used." Further along you say that you know of no better way to explain the
502 meaning of the term than by giving examples of some of the influences which created differences in circumstances and conditions. The examples which you give are examples which came into existence after the passage of the law. In the first phrase which I have quoted, you use the present tense, and in the last, the past tense. Are we to understand that you are speaking of the difference in circumstances and conditions as understood by railroad men since the passage of the law or before?

A. In the first place, I do not think all the examples which I give are from my experience since the passage of the law. Secondly, I do not think there has been any difference between the influence

exercised by the circumstances and conditions of which I give examples upon charges for transportation since the law, and prior to its passage.

Q. 10. In the first part of your answer to this fourth interrogatory, you say that the term is now used with reference to conditions, etc., controlling the movement of persons and property. I do not understand you to say that it was used (I mean the phrase containing these very words) prior to the passage of the law. Does it not follow, therefore, that in the subsequent clause of your testimony, where you explain the meaning of the term as employed by railroad-traffic men, that that meaning is confined to its use since the law went into effect?

A. When used previous to, or since the passage of the law, it had, in my judgment, the meaning described by me.

Q. 11. Having used the present tense in the first part of your answer, you lost sight of the fact that the fourth interrogatory requested you to state how that phrase was understood prior to the passage of the law, did you not?

A. If I did, it was carelessly done, because the answer would be the same, simply changing the tense from present to past.

Q. 12. You have given in your answer to the fourth interrogatory a schedule compiled from the census of 1880 showing the total charges paid by shippers during some one year, as I suppose. Will you please state what year was covered by those figures, or give reference to the census report where those figures can be obtained?

503 A. I am unable to say at present, but will send you the information.

Q. 13. If I understand this table, it is not one which is taken bodily from the census report, but one which was compiled by you or under your direction from the official figures?

A. That is correct.

Q. 14. I notice in the first item that you include the amount of interest paid on debt, but do not find any profit or money which was paid out to owners of the property, exclusive of interest paid on debt; does not the census for 1880 show that there was paid during the year for which this table is compiled, some percentage of the amount of charges paid to the owners of the property, on their investment?

A. I do not remember.

Q. 15. Then by the use of "total charges paid" in the table, you do not mean the amount of money which the patrons of the railroad companies paid to the railroad companies during that year, but you mean the amount of money which the railroad companies paid out as operating and other expenses, including the interest on debt, and not including dividends paid to stockholders on their stock?

A. That is correct.

Q. 16. In practice, are railroad rates at the present time based upon the cost of the service?

A. In a general sense, yes. By that I mean that railroads in practice do not carry freight or passengers for less than cost, always

endeavoring to get something more than the cost, whether it be the average cost or the actual cost, according to circumstances, and never to exceed a reasonable return.

Q. 17. Suppose two articles of the same bulk and weight are carried over the same line and in the same direction, but one article is worth ten times that of the other, excepting the risk of transportation, the cost of service per ton per mile would be the same, would it not?

A. Yes, sir.

Q. 18. And yet it is the common practice of railroad com-
504 panies to charge a greater rate for the transportation of the more valuable article, is it not?

A. Yes, sir.

Q. 19. This is put upon the ground of the value of the service to the shipper and not based upon difference in cost of service, is it not?

A. Yes and no. As I think I have explained, the cost of carriage to the carrier is a very complex question—we might say an indeterminate quantity. The average cost, by which I mean a cost which will meet all the charges, fixed and variable, against the property, in the conduct of transportation, is one thing. The actual cost of the movement, by which I mean the moneys expended incidental to the movement of a particular lot or consignment of property, is another thing. Now, the volume of traffic has a very great influence upon the first item. If your volume of traffic is large, you have a greater amount of traffic over which to spread the fixed charges, and just in the degree that these fixed charges are spread over a larger volume of traffic, the average cost per ton per mile is reduced. Now, the question you ask relates to the classification of goods—a system of charges which has not been adopted voluntarily by the carrier, but forced upon him by the necessities of trade. He is obliged, in fixing his charges, to have reference to what the property will bear—that is to say, he puts his charges no higher than the property will bear. High grade goods—goods of great value—are usually luxuries of small consumption relatively, and their price to the consumer or user is of more or less indifference, and so the higher charges are put upon that class of goods. If the same charge was put upon goods of lower value, or if an average charge was adopted for both classes, the lower classes would not move. By their not moving the volume of traffic would be reduced, and the average cost to the carrier would be greater. In that sense, no.

Q. 20. Take the illustration which you give of the rate on sugar from San Francisco to Kansas City and Denver. The Denver and
505 Kansas City rates are based upon the competition of markets, if I understand your answer—strictly upon what the traffic will bear, and not based upon the cost of service except for the reason which you stated in your last answer?

A. No; I think the Denver traffic would bear a higher rate.

Q. 21. As you understand the meaning of the words "conditions and circumstances," any circumstance or condition which affects the

revenue derived by a carrier, is such a dissimilarity as warrants the carrier in deviating from a uniform rate per ton per mile?

A. No, sir; I would not state it as broadly as that. I think that carriers must always be reasonable in their charges and their rules and regulations. I do not believe any circumstance affecting their revenue would be justifiable which would work harm to the communities they serve.

Q. 22. Still this principle of difference in revenue induces the carriers to make greater rates for a shorter haul sometimes, does it not?

A. Yes, sir.

Q. 23. From what you have said, and the illustrations which you have given, are we to infer from your testimony, that at the time the interstate commerce act was passed, railway-traffic managers were accustomed to make tariffs in such manner as the circumstances and conditions might, in their judgment, make right and just, although shippers at different points might not pay the same charge per ton per mile in all cases?

A. Yes, sir. I would explain, however, by saying that I do not see how any railroad-traffic manager, State or interstate commissioner, State or United States judge, could do any differently than make his tariff according to what he thought was right and just.

Q. 24. So that it was a universal custom, with some exceptions, for railroad companies, prior to the passage of the act, to make a greater charge for a shorter haul?

A. Not as a rule, but it was frequently done.

Q. 25. One of the prominent exceptions to this rule was the Pennsylvania Railroad Company, was it not?

A. I believe, for a short time only, previous to the passage of the interstate commerce law, the Pennsylvania Railroad Com-
506 pany did adopt the plan of districting its lines between Chicago and the Atlantic seaboard, making the same rates for each district, and not charging more for a shorter than for a longer haul, but I do not know another railroad company in the United States, unless it might be the New York Central, and its affiliated lines, that could afford to do so. I doubt if the New York Central could afford it. I think what may be termed the through business of the Pennsylvania road, which is ordinarily the competitive business, amounts to but an insignificant percentage of its total business. I do not now recall, although I have heard, just what that percentage is. In pursuing that policy, the Pennsylvania Company is actuated by the same motives which control other companies in adopting the contrary practice, the pursuit of its own interest and the public interests it serves. In runs all the way from Chicago to New York through a densely populated manufacturing district. Its interest, and the interest of the communities it serves, is to build up these local manufacturing districts, hence the very same influence that would move other lines to increase their traffic by lower rates for a longer haul would operate upon the mind of the traffic officer of the Pennsylvania road to restrain him from doing it, if its effect would be to promote industries in competition with those on its

own roads, he would rather see that his local industries were cared for. Put the Pennsylvania Company, or the very same management, in control of the Southern Pacific Company's lines, and I believe it would adopt and uphold precisely the policies pursued by the Southern Pacific Company.

Q. 26. Which is, in many instances, to charge a greater sum for the shorter haul?

A. In some instances, but not as a rule.

Q. 27. Are Beaumont, Texas, and Houston, Texas, both on the line of your road?

A. They are.

Q. 28. And yet they are both points where you compete with other roads?

A. If you mean by that, that at both points there are other roads besides our own, I answer no. The Southern Pacific is the
507 only railroad that I know of which serves Beaumont, but there are several other railroads at Houston, Texas.

Q. 29. Do both these points take the same rate from New York?

A. I cannot answer that. These points are in Texas, on the Southern Pacific Company's Atlantic system, with which I am not familiar as to local rates, so as to answer that question.

Q. 30. There are a number of non-competitive points on your road between Beaumont and Houston?

A. I think they are, but they are comparatively unimportant.

Q. 31. Do you know whether or not these non-competitive points between Beaumont and Houston all take the same rate from New York as are given to Beaumont and Houston?

A. I could not say.

Q. 32. Prior to the passage of the law, the complaints in regard to railroads making a greater charge for a shorter haul were very general and violent, were they not?

A. Not in my section of the country—the Pacific coast. I believe complaints regarding a higher charge for shorter hauls, resulting from competition between carriers or markets previous to the passage of the law were comparatively few.

Q. 33. You know Mr. Albert Fink, I suppose?

A. Yes, sir; I know him.

Q. 34. His connection with railroads in the East, at and prior to the time of the passage of the interstate commerce law, was such as to enable him to have accurate information in regard to complaints which were made by the different communities as to the greater charge for the shorter haul, was it not?

A. I think Mr. Fink's opportunities for observation were curtailed, just like those of the rest of us. Within his experience, I should regard him as an authority.

Q. 35. His situation was such as to enable him to judge, perhaps, rather better than yourself as to complaints of communities in regard to this method of making rates, was it not?

A. I should hardly be willing to acknowledge that. I do not think Mr. Fink's employment brought him as sharply in contact

with the conditions which caused the discrimination referred to as I was brought in contact with such conditions.

508 Q. 36. You remember, do you not, that there was considerable discussion in the public press, in the different legislative bodies, and perhaps to a limited extent in the courts, as to the propriety of carriers making a greater charge for a shorter haul, previous to the enactment of the act to regulate commerce?

A. I do not remember that this discussion, of which you spoke, was noticeable previous to Mr. Reagan's original attempt to formulate an interstate commerce law, when I believe he was a member of Congress, and had the theory, which, so far as I know, he still clings to, although he does not practice it as chairman of the Texas State commission, that rates should be the same per mile for all distances and under all circumstances. I believe the agitation started with him.

Q. 37. Then, from the time of the introduction of the Reagan bill, until the time of the passage of the law, the long and short haul feature was very generally discussed, was it not?

A. Not in my section of the country, where it was practiced perhaps as commonly as in any other part of the country.

Redirect examination:

Q. 1. Without regard to whether your answer to the original interrogatory No. 4 was or was not strictly responsive to said interrogatory, please state now whether the facts set forth in said answer are false or true.

A. They are true.

Q. 2. In your answer to cross-question number twenty-five, you speak of the Pennsylvania Railroad Company taking care of its local industries. Are we to understand that railroad companies generally disregard the interests of their local industries?

A. On the contrary, it is their first care to protect and encourage them.

J. C. STUBBS.

It is agreed between counsel, that on page 27, fourth line from the bottom of the direct examination, there may be inserted between the words "vessels" and "peculiarly" the words "and steamers and with respect to freight."

509 In the United States Court.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND PACIFIC RAILWAY COMPANY.

Deposition of D. Miller, on Behalf of Defendants.

The deposition of D. Miller, taken without notice, by consent, before E. W. Cist, notary public in and for Hamilton county and State of Ohio, at the office of Messrs. Harmon, Colston, Goldsmith & Hoadly, No. 35 West Fourth street, Cincinnati, Ohio, on the 2d day of July, 1892.

D. MILLER, a witness for defendant, being duly sworn deposes as follows:

By Mr. COLSTON:

1 Q. State if you are the same party whose testimony is printed at page — of the printed testimony of this case?

A. I am.

2 Q. Please state whether the rate from Cincinnati, Ohio, to Atlanta, Ga., of $1.07 per 100 pounds on first-class freight, is a reasonably low rate, in your opinion.

A. I consider it a reasonably low rate.

(It was agreed by both parties that all objections for competency and relevancy should be considered as made to any question, without making specific objections.)

3 Q. State whether in rate-making, distance is or is not a controlling factor.

A. Distance and the cost of service is the controlling factor in making rates, and is the basis upon which rates are made, except where competition or other conditions interfere.

4 Q. Suppose the rate from a central point, say Cincinnati, to two or more other points of unequal distance from Cincinnati to be the same; would such rate be unreasonable on account of that, in your opinion?

A. No, sir.

5 Q. You may state why the same rate from one point to other points of unequal distance from the starting point would not be unreasonable; what reasons there may be.

A. The rate to the shorter distance may be a reasonable rate, while to the longer distance, competition may force the lines to accept the same rate as for the shorter distance. The difference in circumstances and conditions may, and do, justify the same charge, and sometimes a less charge, for the longer distance.

6 Q. What offices of the Cincinnati, New Orleans and Texas Pacific Railway Company are in Cincinnati, Ohio?

A. The office of president, vice-president, and all the offices of the company are located in Cincinnati.

7 Q. Where are its corporate meetings held; the meetings of stockholders and directors?

A. In Cincinnati.

510 8 Q. Where is the office of its general freight agent?

A. Cincinnati.

9 Q. Of its general manager?

A. Cincinnati.

10 Q. Are there any general offices of said company at any place other than Cincinnati, Ohio?

A. All the general offices are in Cincinnati.

11 Q. I want to call your attention to the fact that the rate from Cincinnati to Atlanta was at one time $1.01 on first-class freight; please state how long that rate was in existence and why it was put at that figure?

A. The rate of $1.01 was in effect about thirty days during 1889. It was during a temporary demoralization of rates from the East; owing to a dispute as to insurance differences by the water and rail lines. It was only temporary.

12 Q. What is the first-class rate from Baltimore to Atlanta?

A. The rail and water rate is $1.07 per 100.

13 Q. Over what lines is business to and from Social Circle done; that is, what lines are there that do business into Social Circle?

A. There is only one railroad that runs into Social Circle, and that is the Georgia railroad.

14 Q. In shipping goods from Cincinnati to Atlanta or to Social Circle, Ga., the freight being paid at the destination, from whom does the Cincinnati, New Orleans and Texas Pacific Railway Company receive its share of that freight, and where does it receive it?

A. It receives it from its connections at Chattanooga, Tenn., from the East Tennessee, Virginia and Georgia, and from the Western and Atlantic.

15 Q. Chattanooga, Tenn.; receives it there?

A. Yes, sir.

16 Q. What is there, if anything, that accounts for the rate on first-class freights from Cincinnati to Birmingham being less than the rate from Cincinnati to Atlanta?

A. Memphis being a competitor of Cincinnati for the trade of Birmingham, and the distance from Memphis to Birmingham being only 251 miles, the Kansas City, Memphis and Birmingham railroad have established a rate of 75 cents per 100 pounds on first-class goods from Memphis to Birmingham, thus compelling this company to make a very low rate from Cincinnati to Birmingham; and we have found that Cincinnati would compete with Memphis for the trade of Birmingham at a rate of 89 cents per 100 pounds, first class, which rate we have made. Moreover, if the rail rate from Cincinnati to Birmingham was made $1.07 (the Atlanta rate) goods would be shipped from Cincinnati by boat to Memphis, thence to Birmingham, as the Ohio River boats would be able, upon such a basis, to make a less through rate than $1.07 per 100 pounds.

Cross-examination by Mr. SAFFORD:

1 Q. In your testimony formerly given, in speaking of prepaid freight, you said that the amount which was paid by your road to the connecting roads was upon a basis of division arrived at by an arrangement between the companies; I suppose that the same arrangement applies to shipments of goods where the freight
511 is paid at destination, does it not?

A. Yes, sir. I want to say, by "arrangement" that the only arrangement that exists is where lines accept less than their local rates. Where they charge their local rates no arrangement is necessary. For instance, we have an arrangement for dividing rates from Cincinnati to Atlanta, on a mileage basis; an agreed through rate and divisions, but to Social Circle there is no arrangement other than the demand of that company for their local rates, that is, the demand of the Georgia Railroad Company for their local rate from Atlanta or Augusta to Social Circle.

2 Q. In your last answer do you intend to modify what you said before, in regard to a common arrangement providing for continuous shipment between Cincinnati and all points in Georgia?

A. No, sir.

Redirect examination by Mr. COLSTON:

1 Q. In shipments from Cincinnati to Social Circle, what arrangement if any did you have with the Georgia railroad, whose line covers the distance from Atlanta to Social Circle?

A. We had no arrangement and there exists no arrangement by which they accept less than their local rate, that is, the rate they charge from Atlanta proper to Social Circle.

2 Q. The Georgia Railroad Company would then charge the same as if those goods had been shipped by a shipper resident in Atlanta, to Social Circle?

A. Yes, sir.

3 Q. The shipments that you speak of are shipments in less than car-load lots?

A. Yes, sir.

4 Q. Is that class of shipments subject to change of bulk, from one car to another at the end of the route?

A. Yes, sir; we don't contract to take it through to Social Circle in the same car. We occasionally have car-load freights for the Georgia railroad and we allow our cars to go through to those points and they accept them.

5 Q. Do you participate in any portion of that rate from Atlanta to Social Circle?

A. No, sir. If we transferred the car at Atlanta, it would have to be done at our expense; the Georgia railroad would not pay it.

6 Q. Then when you say in this testimony that you do not intend to modify your evidence heretofore given which is in print, your understanding of your evidence heretofore given is that you spoke not of any common arrangement between your company and the Georgia Railroad Company for shipments at an agreed rate of

freight from Cincinnati to Social Circle, nor for a necessary through shipment from Cincinnati to Social Circle?

A. Yes, sir; I only spoke of the common practice of allowing the Georgia railroad their locals.

7 Q. And you so understood it, in speaking of your former testimony?

A. Yes, sir.

8 Q. To get a shipment from one railroad to another, does it require any prior arrangement or prior agreement?

A. No, sir.

9 Q. I mean in the absence of an agreed rate.

512 A. It does not require any arrangement. They have their fixed charges and demand those, and if we pay them they accept the freight.

10 —. Treating you exactly as if you were a shipper starting freight from the beginning of their line?

A. Yes, sir.

By Mr. SAFFORD:

Q. Do you make any distinction in your own mind between an arrangement and an agreement between carriers?

A. I do not; no, sir.

D. MILLER.

STATE OF OHIO, *Hamilton County,* } ss:

I, E. W. Cist, a notary public in and for said State and county, do certify that the foregoing deposition of D. Miller, a witness for the defendant, was taken before me at the office of Messrs. Harmon, Colston, Goldsmith & Hoadly, No. 35 West Fourth street, Cincinnati, Ohio, on the 2d day of July, 1892; that the said witness was first duly sworn to tell the truth, the whole truth, and nothing but the truth before giving his said testimony; that there were present Mr. A. G. Safford on behalf of the complainant, and Mr. Edward Colston and Mr. C. M. Cist on behalf of the defendant. Notice caption and certificate were waived by consent of both parties.

Given under my hand and seal this 9th day of July, 1892.

[SEAL.] E. W. CIST,
Notary Public, Hamilton County, Ohio.

Filed in clerk's office, 25th day of July, 1892.

O. C. FULLER, *Clerk,*
By GEO. S. BARNARD,
Deputy Clerk.

In the United States Circuit Court, Northern District of Georgia.

INTERSTATE COMMERCE COMMISSION
vs.
CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY. } In Equity.

Testimony of L. N. Trammell, Esq.

On Friday, the 30th of December, 1892, pursuant to an order previously taken in the above-stated case, there met in my office in Atlanta, Ga., R. L. Berner, of counsel for complainant, and Mr. Holderly, of counsel for defendant, for the purpose of taking the testimony of L. N. Trammell, a witness for complainant, which testimony was taken before the undersigned as examiner and which will appear in the following nine pages.

M. J. McCORD,
Special Examiner.

513 L. N. TRAMMELL, sworn for the complainants.

Direct examination by Mr. BERNER:

Q. What is your name?
A. L. N. Trammell.
Q. Age.
A. Sixty-two years old.
Q. Residence?
A. Marietta, Ga.
Q. Occupation?
A. Railroad commissioner of the State of Georgia.
Q. How long have you been railroad commissioner of the State?
A. Eleven years the 15th day of last October.
Q. In your capacity as railroad commissioner of the State, is it your duty to examine into the question of transportation and freight rates?
A. It is.
Q. Does this include both State and interstate freight rates?
A. Yes, sir; it is made our duty to examine into them and make State rates, and to examine into and where we find discrimination of interstate rates against any point in Georgia, to make complaint to the Interstate Commerce Commission of those rates.
Q. From your knowledge of transportation and freight rates, both State and interstate, what is your opinion of the reasonableness and justice or the unreasonableness and injustice of the following rates of freight: Of first-class freight, car-load lots, from the city of Cincinnati, Ohio, to the city of Augusta, Ga., being $1.07 per 100, and the rate from the city of Cincinnati, Ohio, to the town of Social Circle on the Georgia railroad being $1.37; in your opinion, is the rate to Social Circle as compared with that to Augusta reasonable and just or unreasonable and unjust?
A. Based upon mileage and tonnage, I would say it was unjust, the Social Circle rate being too high.

Q. If the rate of freight, first class, car-load lots, say upon buggies, from the city of Cincinnati, Ohio, to the city of Atlanta, Ga., is $1.07 per 100, and the rate upon like shipments from the city of Cincinnati, Ohio, to the city of Augusta, Ga., is $1.07 per 100, would this, or not, be an additional reason for the rate to Social Circle at $1.37 upon like shipments, being too high?

A. Yes, sir. It makes the rate from Atlanta to Social Circle out of proportion with the rate from Cincinnati to Atlanta or to Augusta. It takes it out of the line and makes it unjust and arbitrary from Atlanta to Social Circle, that is, taken in connection and compared with the rate from Cincinnati to Atlanta and from Cincinnati to Augusta.

Q. Have you ever known or come in contact, in the course of your investigations, either of State or interstate traffic, with any shipments of goods from Cincinnati or the western markets by way of New York, or Baltimore, or Norfolk, or other eastern seaports, and thence by ocean transportation through the seaports of the southern seaboard to the inland towns in Georgia; if yea, name the instance, and state what proportion of the traffic coming from the western markets reaches inland towns in Georgia by that method.

514 A. I have no recollection at this time of any shipments having come before the commission shipped over any one of those lines.

Q. Is there a steamboat line running in the Ockmulgee river to the city of Macon, or has there been one in your recollection?

A. I remember that many years ago, and a great many years ago, there was occasionally a boat that came up to Macon. There is no line there now, or I have not heard of any in a great many years. I say there is no line; I mean there is none in my knowledge.

Q. Let us suppose the distance from Cincinnati to Augusta is 645 miles via Atlanta, and that after reducing the water transportation to rail mileage, by the rule usual in such cases, the distance from Cincinnati, via New York, Baltimore or Philadelphia, or the eastern seaports, via the ocean, through the seaports of Augusta, Savannah, or Brunswick is 932 miles or more, what effect in legitimate transportation should the competition between these two lines have upon the short line from Cincinnati via Atlanta to Augusta?

A. All things being equal, the long line ought not, in legitimate transportation, affect the rates of the short line.

Q. What authority, either as matter of law or as matter of fact, has the Georgia railroad commission got over the interstate rates?

A. They have no jurisdiction or control over interstate rates. The only action we can take is to bring them before the Interstate Commerce Commission when we adjudge them to be discriminating to have them corrected.

Q. What would be the effect of any rate fixed or to be fixed by the Georgia railroad commission on interstate on shipments through bills?

A. I can't answer what it would be, as we have no control at all

over interstate rates. The effect would be what the railroad officials might make it in making the interstate rates.

Q. If the railroads in fixing the rate from Cincinnati to Social Circle added to the through rate to Atlanta the arbitrary rate fixed by the Georgia railroad commission in this State to the point of Social Circle, and this combination of rates made the rate from Cincinnati to Social Circle higher than it was from Cincinnati to Augusta, would you or not say this was discriminating against that point, Social Circle?

A. I would.

Cross-examination by Mr. HOLDERLY:

Q. You said that, other things being equal, the long line ought not to affect the through rate by the short line, in response to a question put with regard to the long line from Cincinnati by way of Baltimore and New York to Augusta, reaching Augusta by way of the Atlantic ocean to seaport points, such as Savannah, Charleston, and Brunswick, and thence by rail to Augusta. I want to ask if, in that state of facts, all things are equal, isn't the fact that the through rate from Cincinnati and other interior cities of that group, such as Indianapolis, St. Louis, and Columbus, Ohio, to the
515 seaport points are all fixed and governed by the water competition, and are carried on by roads having very much larger traffic, and therefore able to make very much lower rates for the same distance than roads south of the Ohio river?

A. The rates referred to are rates with which the Georgia railroad commission has nothing to do towards making, and I could not testify upon what principle they were made, not knowing.

Q. I will ask you whether or not you are aware that the rates from interior points, including Cincinnati, are fixed upon a percentage of the Chicago rates?

A. Only for common rumor. I have no knowledge of it.

Q. And that the Chicago rate itself is governed and regulated by the water competition by way of the lakes, Erie canal, and transportation by Buffalo, by lines which are not subject to the Interstate Commerce Commission?

A. I know nothing of that only from common rumor. I never was in a rate meeting of the railroads in my life, and I could not testify to the reason or facts that govern them in making the rates.

Q. Do you know what the rate on first-class freight from Cincinnati over the trunk lines to New York and Baltimore is?

A. I do not. By reference to the rates of the Southern Railroad and Steamship Association I suppose I could ascertain, but I can't keep those things in my head.

Q. So far as your knowledge exists, it may very well be that the competition spoken of by way of the Atlantic ports from Cincinnati to Augusta is possible?

A. Yes, sir; it may be possible.

Q. In your judgment, as having observed railway rates for a number of years, and been engaged in fixing them and judging of

their effects, isn't the fact that competition is possible, if the rate be increased, a reason why the railroad is justified in keeping it at a rate which might otherwise seem unreasonably low?

A. Yes, sir; I would answer that that is so. Now, I understand that that question means, that if the line by way of Baltimore and Charleston to Augusta should cut the Augusta rate, then would not the line from Cincinnati by way of Atlanta to Augusta have the right to meet the cut rate without reducing intermediate rates? I would say yes.

Q. Do you know to what extent shipments take place from Cincinnati and seaboard points by combination of lake and rail rates?

A. I don't know anything about that. We have nothing to do with those rates, and I am not informed as to their extent.

Q. There are, I believe, very extensive shipments of first-class goods originating at Baltimore, Philadelphia, and New York to Augusta, Atlanta, and other points in Georgia, are there not?

A. Yes, sir; I presume so.

Q. Those goods enter into competition in the markets of Augusta and Social Circle with goods shipped from Cincinnati, do they not?

A. I suppose they do.

Q. Baltimore, Philadelphia, and New York are large mar-
516 kets, containing a great many merchants and manufacturers who compete with the merchants and manufacturers of Cincinnati and Chicago and other western cities, do they not?

A. That is so, I presume.

Q. Do you know whether there are any manufacturers of the grade of buggies that are shipped to the South in car-load lots from Cincinnati in those eastern cities, Baltimore, Philadelphia, and New York?

A. I do not of my own knowledge.

Q. Now, Colonel, what I am driving at, and what I want to make it perfectly clear, let us suppose that at a rate of $1.07 from Cincinnati to Augusta it is impossible for the lines by way of the seaport cities to practically compete for any serious amount of Augusta business, wouldn't it be fair for the rail lines from Cincinnati to Augusta to keep that rate at $1.07, even though, as compared with other local rates to intermediate points, it might be lower?

A. If the rate at Augusta is an agreed rate between the lines from Cincinnati to Augusta, by way of Atlanta, and the lines from Cincinnati by the East, and Charleston and to Augusta, and the latter should cut the rate at Augusta, the line by way of Atlanta should have the right to meet the cut without reducing the rates at intermediate points between Atlanta and Augusta. But in making the agreed rate the line from Cincinnati, by way of Atlanta, to Augusta, should not make a rate with the discriminations that is in the rate complained of; and upon proper principles, all things being equal, the rate should be no lower at Augusta that at Social Circle.

(By Mr. BERNER:)

Q. In your investigations of transportation as railroad commis-

sioner, do you know or have you ever seen or come in contact with any shipments from Cincinnati via lines through North Carolina to Augusta?

A. I don't remember any.

Q. Is there any competing line from Cincinnati to Augusta, through east Tennessee and west North Carolina to Augusta, that you know of?

A. Without having a map before me to look at the lines, I think there is, just giving an opinion without being fully informed.

Q. You think there is?

A. I think there is. I will state that I am not informed on the subject.

Q. If upon an examination of the maps you should find that you are mistaken, will you correct the same in your examination?

A. Yes.

Q. Mr. Holderly asked you whether you knew that there was a competition between the manufacturers of the cities of the East and the manufacturers of the cities of the West over their goods in the city of Augusta. Do you know of your own knowledge whether any competition exists between those respective points for the trade of buggies in the city of Augusta?

A. No, sir; I do not.

Q. Do you know what effect the fixing of the rate of $1.37 on buggies, car-load lots from Cincinnati to Social Circle, had upon the buggy business in Social Circle?

A. No, sir; I do not.

The WITNESS: With reference to the competing lines through east Tennessee and North Carolina, I will say now that my
517 understanding is that there are connecting roads, but I don't know whether they make a competing line or not. There are certainly connecting roads, but it is entirely out of my jurisdiction, and I do not know whether or not the connecting roads make a competing line.

L. N. TRAMMELL.

Filed in clerk's office, January 9, 1893.

O. C. FULLER, *Clerk.*

In the United States Circuit Court, Northern District of Georgia.

INTERSTATE COMMERCE COMMISSION
vs.
CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY *et al.* } In Equity.

Testimony of Allen Fort, J. L. Hand, and J. O. Shepard.

On Tuesday, the 10th day of January, 1893, there met at my office in Atlanta, Ga., R. L. Berner, Esq., of counsel for complainant in above-stated case, and B. H. Lee, Esq., of Messrs. Hillyer & Lee, of counsel for defendant (Mr. Lee appearing only for the purpose of protesting against the taking of the evidence, at this time

and place, on account of the absence of counsel having direction of the case, not having a sufficient knowledge of the issues involved to properly conduct the examination himself, and further on account of a lack of notice to appear at the examination, on the part of the defendant), for the purpose of taking the testimony of Allen Fort, J. L. Hand, and J. O. Shepard, witnesses for the complainant, which testimony was taken before the undersigned, as the examiner for this court, over the objection by Mr. Lee, as stated above, and which testimony will appear in the following 14 pages.

O. C. FULLER,
Examiner U. S. Circuit Court, Northern District of Georgia.

ALLEN FORT sworn for the complainants.

Direct examination by Mr. BERNER:

Q. What is your name?
A. Allen Fort.
Q. Age?
A. 43.
Q. Residence?
A. Americus, Ga.
Q. Your occupation?
A. Railroad commissioner and lawyer.
Q. How long have you been railroad commissioner of the State of Georgia?
A. One year, and from the 15th of last October to the present time, more than a year.

518 Q. In your capacity as railroad commissioner of the State is it your duty to examine into the question of transportation and freight rates?

A. It is.
Q. Does this include both State and interstate freight rates?
A. It includes, primarily, the local rates in the State, though it is made my duty to investigate the complaints of discrimination and extortion in interstate rates to points within the State for the purpose of seeking relief against unjust discrimination and extortion before the Interstate Commerce Commission. The railroad commission of Georgia have no jurisdiction over interstate rates, and only consider and investigate them for the purpose just stated.
Q. From your knowledge of transportation and freight rates, both State and interstate, what is your opinion of the reasonableness and justice or the unreasonableness and injustice of the following rates of freight: The rate of first-class freight less than car-load lots, say of buggies, from the city of Cincinnati, Ohio, to the city of Augusta, Ga., being $1.07 per hundred, and the rate from the city of Cincinnati, Ohio, to the town of Social Circle on the Georgia railroad being $1.37, in your opinion is the rate to Social Circle as compares with that to Augusta reasonable and just, or unreasonable and unjust?
A. I think the rate named to Social Circle as compared to the rate named to Augusta is unreasonable and unjust.

Q. If the rate of freight as stated in the last interrogatory from Cincinnati to Atlanta, Ga., is $1.07, to Social Circle $1.37, to Augusta $1.07, state whether or not in your opinion, the fact that the rate is the same from Cincinnati to Atlanta and Augusta, both of which is much lower than to Social Circle, intermediate between these cities, is an additional reason or one reason for the same being unjust and unreasonable?

A. Yes, and another reason is that if the rate of $1.07 to Augusta was a fair rate and one agreed upon by the railroads and one regarded as sufficiently remunerative for them to adopt and seek business under, then the rate to Social Circle being 30 cents per hundred pounds higher would be unreasonable, being a shorter distance than the distance to Augusta. If the rate to Augusta was reasonably low then the rate to Social Circle must be unreasonably high.

Q. From what sources have you obtained your knowledge of freight rates and transportation?

A. From careful consideration of the subject on investigation of rates for the purpose of affixing and adjusting them between points within the State; from the arguments and experience of men engaged in this business; from careful study of different works on the subject; from the practical operation of the roads in Georgia, which have come under my observation; from all the sources where I thought light could be had that reflected on the question.

Q. In what capacity have you made this investigation?

A. The past year or more as a railroad commissioner. Prior to that time I have investigated the subject as a legislator and as a person desirous of being fully informed of what I deemed a most important subject and one in which I felt a great interest.

519 Q. In your investigation of freight rates and transportation, either State or interstate, as railroad commissioner or otherwise, have you ever known or come in contact with any shipment of goods from Cincinnati or the western markets by way of New York, Baltimore, Philadelphia, or other eastern seaports, and thence by ocean transportation through the seaports of the southern seaboard to Augusta or inland towns in Georgia? If yea, name the instances, and state what proportion of the traffic coming from the western markets reaches said town of Georgia by that method.

A. I do not recall a single instance of such shipment, nor do I know of any such.

Q. Let us suppose that the distance from Cincinnati to Augusta via Atlanta is 645 miles, and after reducing the water transportation to real mileage by the rule used in such cases, the distance from Cincinnati via the eastern seaport via the ocean through the seaports of the southern seaboard is 932 miles, what effect in legitimate transportation should the competition between these two lines have upon the short line from Cincinnati via Atlanta to Augusta?

A. I do not think that it ought to have any effect. It does not strike me that it would be legitimate competition—that is, such competition as ought to affect the rates on the shorter lines. It is an artificial and not a natural competition.

Q. Is there a steamboat line running on the Ocmulgee river from the seaboard to the city of Macon?

A. There is not.

Q. Has there been one in your recollection?

A. There has not, in my recollection, been a boat line from Macon to the sea. I had heard that there had been one or two boats make one or two trips to Macon, but no regular established line.

Q. How long ago has it been since these boats made a trip?

A. I do not remember accurately enough to state, nor do I know that they did any business on the trip said to have been made.

Q. What authority, either as a matter of law or of fact, has the Georgia railroad commission got over the interstate rates?

A. The Georgia railroad commission by express terms of the act has no authority to fix or regulate interstate rates, but under an act of the legislature the commission is required to investigate interstate rates, and if they are found to be discriminating or oppressive the commission is required to call the attention of the railroad officials to the wrong and request the proper adjustment of rates to be made by them. In the event of a failure to secure justice in this manner, it is made their duty to institute suit before the Interstate Commerce Commission to compel the road to do justice and obey the law.

Q. Is the rate fixed by the Georgia railroad commission upon freight from Atlanta to Social Circle fixed for local or interstate traffic?

A. It is fixed for local traffic.

Q. State whether or not in fixing this rate as just and reasonable the commission did so with a view to the reasonableness as a local freight rate.

A. Yes, it was deemed reasonable and just as a local rate.

520 Q. If the railroad in fixing the rate from Cincinnati to Social Circle on the class of freight described in these interrogatories, added to the through rate to Atlanta the arbitrary rate fixed by the Georgia railroad commission in this State from Atlanta to Social Circle, for local purposes, and this combination of rates made the rate from Cincinnati to Social Circle higher than it was from Cincinnati to Augusta, would you or not say that this was discriminating against Social Circle?

A. I should say it was; for if a combination of the rates to Augusta from Cincinnati gave one-seven then I think no greater amount should be charged to Social Circle, being a shorter distance.

Q. Is there any competing line from Cincinnati to Augusta through East Tennessee and West North Carolina, knowledge of which you have obtained upon investigation of this subject?

A. There are lines of railroads over this territory by which, I presume, goods might be shipped, but whether or not it is available for competition or has been really used for such purpose I do not know, having had no special occasion to investigate it.

ALLEN FORT.

J. L. HAND, sworn for complainant.

Direct examination by Mr. BERNER:

Q. What is your name, age, residence, and occupation?

A. My name is J. L. Hand; my residence is Pelham, Ga.; my occupation is that of a merchant and a farmer, and I also have some interest in timber and manufacturing; my age is 42 the 20th of next March.

Q. What opportunities have you had for acquiring a knowledge of transportation and freight rates?

A. I have had an active business experience of about twenty years, during which time I have received and shipped thousands of car-loads of freight. In the course of my business undertakings it has been a business necessity for me to familiarize myself with the theory of freight rates on account of the fact that a large amount of the business done by me has been very seriously affected by freight rates. Such articles as lumber, naval stores, cotton, grain, wagons, flour, and bulky and heavy articles like these, being very sensitive to exhorbitant charges.

Q. In your business experience have you ever had occasion to have conferences, either as an individual or as the representative of trade associations, with the railroads on the question of freight rates?

A. I have. For a number of years I have been chairman of the transportation committee of the Georgia Fruit and Melon Growers' Association, and in the discharge of my duties I have had occasion frequently to meet representatives of the various traffic associations for the purpose of securing just and reasonable rates to the melon growers and shippers of fruit.

521 Q. State whether or not it has become necessary for you to study the competitive lines from Georgia both to the eastern and western markets.

A. It has been necessary to become familiar with competitive rates and also the railroad geography of the country generally, both in the discharge of my duties officially and also in the successful conduct of my business.

Q. State whether or not it became your duty to inform yourself accurately as to the various rates on these competing lines.

A. It was on special commodities at certain intervals, and it has always been my practice to try to inform myself whenever the traffic associations have held meetings at which they have made changes in the previously existing rates.

Q. Have you ever been a member of the Georgia legislature?

A. I have.

Q. When in the legislature state whether or not it was ever made your duty to investigate the question of freight rates and transportation.

A. It was my duty while a member of the legislature. I was on the railroad committee for four years, in the senate and in the house, and I was also on several important special committees where the question of transportation was involved.

Q. From your knowledge of transportation and freight rates, what is your opinion of the reasonableness and justice, or the unreasonableness and injustice, of the following rates of freight: First-class freight, car-load lots, or less than car-load lots, say of buggies, from the city of Cincinnati, Ohio, to the city of Augusta, Ga., being $1.07 per 100 lbs., and the rate from the city of Cincinnati, Ohio, to the town of Social Circle, on the Georgia railroad, being $1.37 per 100 lbs.? In your opinion is the rate to Social Circle as compared with that to Augusta reasonable and just or unreasonable and unjust?

A. I should say that the rate to Social Circle was unreasonable and unjust, and in fact an absolute discrimination without justification.

Q. Will you give your reasons for this opinion of yours?

A. Well, in stating this opinion, I would like to say that the ostensible justification for the discrimination against Social Circle on the part of the railroads is that there is competition at Augusta, which requires them to make a lower rate at Augusta, in order to get the business, than is necessary for them to make at Social Circle. As a matter of fact, the natural current of the traffic between Cincinnati and Augusta is via Atlanta and Social Circle to Augusta. This is not only the most economical line, but in fact it is the only practical line. That being true, the charge of a higher rate to Social Circle, which is the shorter distance on the same line, the short haul being embraced in the longer one, there could be no justification in law, and there could be no excuse as a necessary and equitable policy in railroad transportation, because the cost of
522 hauling goods to Social Circle, in the same quantity and over the same line, is necessarily less than it is to Augusta. The alleged water competition to Augusta I should term a railroad myth. Water competition, to justify and to make reasonable a lower rate for a longer haul than for a shorter haul over the same line in the same direction, should be real, practical, active, and potential. These conditions do not exist in the water competition between Cincinnati and Augusta, unless it might be said that for the purpose of increasing their revenue the transportation companies have a chartered or inherent right to tax a local point in an extortionate way for the purpose of increasing their revenues or for the purpose of enabling them to give lower rates to the larger and more wealthy cities, I cannot see how such an act could be justified. It follows, as a matter of course, if the actual cost of transportation is so great that the carriers cannot afford to make a rate of $1.07 per 100 to Social Circle without incurring a loss or doing an unprofitable business, then it is evident that the business of Augusta is done at an absolute loss, a loss which must be made good by the levying of exorbitant rates, we will say between Atlanta and Augusta. Competition to St. Louis from New York via San Francisco and the Southern Pacific railroad would be almost as reasonable as the water competition from Cincinnati to Augusta as against the Atlanta all-rail route.

Q. Mr. Hand, you stated that the route from the western markets via Atlanta was the natural course of trade. State whether or not

it is not also true that the trade of the Mississippi valley included between the Blue Ridge mountains and the Mississippi river, which goes to the southeast, naturally finds its outlet to the sea through the gap at Chattanooga; thence by Atlanta to Augusta and other portions of the seaboard?

A. The gap at Chattanooga furnishes kind of a funnel through which a very large portion of this traffic goes, because it is not only the most direct route, but also because Chattanooga has the benefit of the strongest and best equipped railway systems of the South. A portion of this business, however, takes a southward course along the Mississippi and goes directly east from junctional points, say, via Meridian and other points (which I cannot now recall without a map), finding its way to the Atlantic seaboard through Montgomery.

Q. Mr. Hand, what difference, if any, is there in the cost of transportation or service on shipments of the same character, like quantities, from the city of Cincinnati to the city of Augusta and the town of Social Circle? Would the cost of service or value of service be greater from Cincinnati to Augusta or to Social Circle?

A. I would say that the actual outlay to the transportation companies participating in the haul would be slightly greater to Augusta than to Social Circle, and that the difference would even be greater than the difference in the actual cost of the transportation,
for the reason that at competitive points, under the present
523 policies of the transportation companies, a large number of soliciting agents are employed and a great many other expensive devices are used for the purpose of securing competitive business, which is not true to local points where there is no competition; the business at local points coming to the railroads without any cost.

Q. If the rate of freight, first-class, car-load lots, say, upon buggies, from the city of Cincinnati, Ohio, to the city of Atlanta, Ga., is $1.07 per 100 pounds, and the rate for like shipment from Cincinnati to Augusta is $1.07 per 100 pounds, would this or not be, in your opinion, an additional reason for the rate to Social Circle and intermediate points between Atlanta and Augusta at $1.37 on like shipments being unreasonable and discriminating?

A. In the absence of actual and equal competition at Augusta this certainly furnishes a strong reason why the rate to Social Circle should not be greater than both Augusta and Atlanta rates. If Augusta is the real competitive point and the business from Cincinnati goes to Augusta over the Georgia road, then Social Circle should have a rate not higher than Augusta's rate. On the other hand, if Atlanta is the real competitive point and water competition makes the rate to Atlanta via Augusta, then the rate to Social Circle from Cincinnati should not be higher than Atlanta's rate. This statement, of course, is made on the theory that the natural course of this traffic, on account of water competition, should go to Atlanta via Augusta. The natural course of this traffic, however, is through Chattanooga and Atlanta to Augusta; and I should say that the

rate of $1.07 per 100 pounds for Atlanta is an unjust and unreasonable one.

Q. Let us suppose that the distance from Cincinnati to Augusta via Atlanta is 645 miles, and, after reducing the water transportation to real mileage by the rules usual in such cases, the distance from Cincinnati via New York or other eastern seaports via the ocean, through the seaports of Charleston, Savannah, to Augusta, is 932 miles, what effect in legitimate competition would the long line have upon the shorter line?

A. The long line would cut no figure in making rates to Augusta. The usual way at which rates at competitive points are arrived at is by taking the short-line mileage and constructing a rate on combination over this line. Then, if the long lines participate in this business they must accept the same rate or, of course, they get no business. They are certainly not potential in making rates, and therefore when considered as competitors with the short lines they are very weak ones, and in point of actual experience the contest is a very equal one.

Q. Which line makes the rate, the longer or the shorter?

A. It is an old railroad maxim that the "short line makes the rate and the long line takes the business." This is not practically true, except so far as the rate-making is concerned.

Q. State whether or not it is not true that what is lost by competition at terminal points it is the custom of the railroad to recoup by high rates at intermediate stations?

524 A. Yes. Until the interstate commerce law was passed, and even for some time afterwards, this was a general practice with the transportation companies. During recent years, however, several of the most important trunk lines in the United States have adopted the policy of obeying the law as contained in the fourth section of the interstate commerce act; and, so far as I am informed, this policy has resulted in less friction between the transportation lines and their customers and patrons generally, both at intermediate points and also at terminal points. The complaints of their patrons at terminal points have been met with the statement that they were only obeying the law, and they could not do otherwise without incurring heavy penalties, while of course their patrons at intermediate points have no complaints to make, and no injustice has been done them.

Q. Is there a boat line from the ocean to the city of Macon, or has there been one in your recollection?

A. No, there is not, and there has been none within my recollection.

J. L. HAND.

J. O. SHEPARD, sworn for the complainants.

Direct examination by Mr. BERNER:

Q. Give your name and residence and occupation?

A. J. O. Shepard; Social Circle; merchandise business.

Q. Did you purchase a lot of buggies from the James Mayer Buggy Company, of Columbus, Ohio, within the last several years?

A. I did.

Q. Is it the lot of buggies subject-matter of suit before the Interstate Commerce Commission?

A. I understand that it is.

Q. How many purchases did you make from this firm?

A. I made, I think, only one purchase, but there were different shipments of it.

Q. Did you cease to do business with that firm?

A. Yes, sir.

Q. Why did you quit business with that firm?

A. I bought that lot of buggies for cash, delivered, with discounts off at a certain price. They said that on account of the high rate of freight they could ship me no more at those figures.

Q. Did they refuse to deliver the buggies on account of the high rate of freight?

A. I could not get any more at the same price I paid for the first lot on account of high freight.

Q. What interest have you in this case?

A. I have none.

J. O. SHEPARD.

Filed in clerk's office 11th day of January, 1893.

O. C. FULLER, *Clerk.*

525 THE INTERSTATE COMMERCE COMMISSION
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY.

Testimony of Howard K. James.

On this 2d day of July, 1892, pursuant to notice, personally appeared Howard K. James, of Cincinnati, State of Ohio, a witness on behalf of the peti-oner, The Interstate Commerce Commission; Mr. A. G. Safford appearing for the petitioner and C. M. Cist appearing for the defendant; and the said HOWARD K. JAMES, being first duly sworn, testifies as follows:

By Mr. SAFFORD:

1 Q. What is your name, age, residence, and occupation?

A. Howard K. James, age 35, reside at Cincinnati, Ohio; am president of the James & Mayer Buggy Company, which was the complainant in the case originally brought before the Interstate Commerce Commission.

2 Q. State the extent of the output of your factory annually?

A. We manufacture about 5,000 four-wheeled and 3,000 two-wheeled vehicles.

3 Q. Do you ship largely from Cincinnati?

A. From Cincinnati almost entirely; through the South.

4 Q. Referring to the map which I hand you to be filed with your deposition, and having a circle drawn on it with Cincinnati as a center and a radius the distance of Atlanta; how does the rate of $1.07 per 100 on first-class goods in less than car-load lots, compare with that of other places within the same radius, as far as your knowledge extends?

A. I am not thoroughly familiar, of course, with the rates to all these points in less than car-loads; but speaking generally, from my knowledge of the shipping that we do, I would say that there is no point that I can see in that radius to which we pay more than $1.07, unless it might be such points as Charlotte, N. C., to which we make shipments east almost to the limit of that circle before striking the southern connection, over the Richmond and Danville; but I also see that the map is enough inaccurate not to include Birmingham in the circle; Birmingham is 478 miles from Cincinnati, I believe, and Atlanta is 474 miles by one line, and 488 by another; so that Birmingham is practically the same distance as Atlanta; and the rate to Birmingham is very considerably less than Atlanta, being only 89 cents as against $1.07 to Atlanta.

5 Q. Referring now to the statement to be found in Mr. Stahlman's testimony on page 206 of the printed testimony, and comparing Atlanta with Birmingham, assuming Mr. Stahlman's testimony to be correct, has in your opinion Birmingham, as to Cincinnati business, any advantage over Atlanta, as to competition of carrier with carrier?

A. Not at all, in my opinion.

526 (Defendant objected to this testimony on the ground that the question calls for an expression of opinion in the nature of expert testimony and the witness has not been qualified as an expert in that respect, or testified that he had any knowledge of the circumstances and conditions that control the rates to the points named.)

6 Q. Examining the portion of Mr. Stahlman's testimony to which your attention has been called, does his statement of the different carriers that operate from Cincinnati to Atlanta include any of the carriers which are engaged in business between Cincinnati and Birmingham?

A. It is practically the same from Cincinnati to Birmingham as from Cincinnati to Atlanta.

7 Q. Referring now to competition of market with market, that is to say, the market of eastern manufacturers and those of Cincinnati and western points; how is Birmingham situated with reference to that kind of competition as compared with Atlanta?

A. It is much less favorably situated than Atlanta.

8 Q. Is there competition between your firm and eastern manufacturers in the Georgia markets?

A. Not to any extent that would affect our trade in Georgia.

Cross-examination by Mr. CIST:

1 Q. Is there competition between your firm and eastern manufacturers for Birmingham business?

A. No, sir; not any more than Georgia business.

2 Q. By what line or lines do you ship to Birmingham?

A. We ship by the Cincinnati, New Orleans and Texas Pacific railway and the Louisville and Nashville.

3 Q. In making your shipments to Birmingham, do you ship from Lawrenceburg via Louisville or via Cincinnati?

A. Entirely by Cincinnati.

4 Q. Do I understand you to say that the rate from Cincinnati to Birmingham is as much affected or controlled by competition from the East for the Birmingham market, as is the rate from Cincinnati to Atlanta by the competition of the East for the Atlanta market?

A. No, sir.

5 Q. Explain what your position in regard to that is, what your view of it is?

A. You are speaking of competition of markets. My view of that is that Atlanta is a great deal nearer to the seaboard and nearer to the eastern cities, manufacturing centers, than Birmingham, and therefore more favorably situated as to competition of markets than Birmingham, as compared with Cincinnati and western points on the one hand and Baltimore and eastern cities on the other.

6 Q. You mean to say then that Birmingham can be reached more easily and cheaply from Cincinnati than it can from the eastern seaboard markets?

A. No, I don't say that. You are getting the "carrier" and "market" mixed. I am talking about the more favorable location of Atlanta as far as competition of market with market is
527 concerned, in vehicles, than Birmingham. Atlanta is more favorably situated than Birmingham as far as competition in market is concerned in the seaboard cities than Birmingham.

7 Q. The question I wish to put is whether your eastern competitors, in competing with you for Birmingham business are favorably situated with reference to transportation rates, as they are with Atlanta?

A. With reference to transportation rates, I cannot say.

8 Q. Do you not know that they are?

A. I do not know that they are from eastern cities.

9 Q. Are they as favorably situated with reference to geographical location in their competition with you for the market of Birmingham, as they are with reference to or in competing with you for the market of Atlanta?

A. As I said before, the eastern competition does not materially affect our trade in Birmingham or Georgia either, but what little there is of competition is not as favorably situated in regard to Birmingham as we are.

10 Q. You say the carriers are practically the same from Cincinnati to Birmingham as they are from Cincinnati to Atlanta; will

you please name the carriers on the line from Cincinnati to Atlanta.

A. I was basing my statement entirely upon this statement of Mr. Stahlman. He states here that there are eleven lines from Cincinnati to Atlanta. I never knew that; I did not think there were; but assuming that there are eleven lines from Cincinnati to Atlanta, I said that the lines to Birmingham were practically the same, looking over this statement.

11 Q. Then your answer is merely an inference drawn from your examination of that testimony?

A. Yes, sir; that the same lines would apply to Birmingham.

12 Q. Is not the Alabama Great Southern railroad concerned in the transportation of vehicles from Cincinnati to Birmingham, and in nowise concerned in such transportation to Atlanta?

A. I would have to answer that question in this way, that this testimony of Mr. Stahlman relates to lines from Cincinnati, and each one of these that he gives starts from Cincinnati, and I was only referring to the initial line out of Cincinnati. Their connections and methods may vary, and I do not know anything about the Alabama Great Southern railroad.

13 Q. Then what you mean to be understood as saying is that you can start goods for either Atlanta or Birmingham by either of the initial lines named by Mr. Stahlman?

A. Yes, sir.

14 Q. Do you know to what extent or in what respect the rate from Cincinnati to Birmingham is affected by the rate from Louisville to Birmingham?

A. No, sir.

15 Q. Do you know that by shipping by one of the leading roads from Cincinnati to Birmingham the property would pass directly through Louisville?

A. Yes, sir.

16 Q. Do you know what the distance is from Louisville to Birmingham?

A. No, sir; I do not.

528 17 Q. Do you know that goods shipped from Cincinnati to Birmingham would pass through the city of Nashville if shipped by the Louisville and Nashville railroad?

A. Yes, sir.

18 Q. Do you know to what extent, if any, shipments from Cincinnati to Nashville and Cincinnati to Louisville are affected by the steamboat rates on the Ohio river and the Cumberland river?

A. I do not know to what extent.

19 Q. You know that they are affected by it?

A. I should judge that they were.

20 Q. Have you then any reason to believe that the rate from Cincinnati to Birmingham would be affected by the fact that the rates from Cincinnati to Nashville and Cincinnati to Louisville are affected by the Ohio River steamboat rates?

A. No, not practically affected by it.

21 Q. Do you know the distance from Nashville to Birmingham?

A. No, sir.

22 Q. Do you know the rate by steamboat from Cincinnati to Nashville or Cincinnati to Louisville?

A. I know what they charge on buggies.

23 Q. What is it?

A. It is 50 cents a buggy, equivalent to about 10 cents a 100, I think, from Cincinnati to Louisville. We cannot ship by river to Nashville.

24 Q. Referring now to the map, concerning which you have been questioned, are you familiar with any of the differences in the conditions or circumstances under which the transportation is conducted from Cincinnati to the different points within that radius, say from Cincinnati to Buffalo, Cincinnati to Milwaukee, St. Louis, points in central Pennsylvania, points in northern Georgia, northern Alabama, and western Tennessee?

(Counsel for complainant objected, on the ground that what constitutes difference in conditions and circumstances is a question of law, which the parties are endeavoring to settle in this case.)

A. I am familiar, as any ordinary man would be, with the difference in the circumstances and conditions, but not as a railroad man would be.

25 Q. Well, state some of the conditions under which railway transportation is done in the north, as compared with south of the Ohio river.

A. I can realize that a railroad passing through a thickly populated country with a large local traffic, might make some lower rates than a railroad passing through a sparsely settled country with a small traffic. That might constitute a difference in circumstances and conditions that would affect rates, as I understand those words.

26 Q. Do you consider any difference of that nature exists with reference to the different rates from Cincinnati to points within this circle?

(Counsel for complainant made same objection as to previous question.)

A. To points south, north, and everywhere in that circle, there are differences existing, yes, sir.

HOWARD K. JAMES.

(Here follows map marked p. 528*a*.)

529 STATE OF OHIO, *Hamilton County*, } ss:

I, E. W. Cist, a notary public in and for the said State and county, do hereby certify that the foregoing deposition of Howard K. James, was taken before me pursuant to notice on the 2d day of July, 1892, at the office of Messrs. Harmon, Colston, Goldsmith & Hoadly, No. 53 West Fourth street, Cincinnati, Ohio; that said witness was by

me first sworn to tell the truth, the whole truth, and nothing but the truth, before giving his said deposition, and that said deposition was signed in my presence. There were present at the taking of said deposition, Mr. A. G. Safford, on behalf of petitioner, and Edward Colston, Esq., and C. M. Cist, Esq., on behalf of defendant.

Given under my hand and seal this 6th day of July, 1892.

[SEAL.] E. W. CIST,
Notary Public, Hamilton County, Ohio.

Clerk's Certificate.

UNITED STATES OF AMERICA, }
Northern District of Georgia. }

I, Olin C. Fuller, clerk of the United States circuit court, in and for the northern district of Georgia, do hereby certify the foregoing to be a true, full, correct, and complete transcript of the record and proceedings had in the cause wherein The Interstate Commerce Commission was complainant, and The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company were respondents, as appears of record and now remaining of file in my office.

In testimony whereof I hereunto set my hand and seal of the said circuit court, at Atlanta, Ga., this the 10th day of August, A. D. 1893.

[SEAL.] OLIN C. FULLER, *Clerk.*

530 November Term, 1893.

MONDAY, *January 29th*, 1894.

(*Extract from Minutes.*)

INTERSTATE COMMERCE COMMISSION }
v.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company. }

This cause came on to be heard this day, and after argument by Mr. N. J. Hammond, for appellant, and Mr. Ed. Baxter, for the appellee, further argument was postponed until tomorrow.

November Term, 1893.

TUESDAY, *January 30th*, 1894.

(*Extract from Minutes.*)

INTERSTATE COMMERCE COMMISSION }
v.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company. }

This cause came on again to be heard this day, and after argument by Mr. George Hoadley, Jr., counsel for The Cincinnati, New

Orleans and Texas Pacific Railway Company, appellee, and
531 by Mr. Joseph B. Cumming, counsel for the Georgia Railroad Company, and by Mr. George T. Edmunds, counsel for appellant, the cause was submitted to the court upon brief of Mr. Geo. T. Edmunds and Mr. N. J. Hammond, for the appellant, and of Mr. Joseph B. Cumming and Mr. Ed. Baxter, for the Georgia Railroad Company; Mr. J. Carroll Payne, for the Western and Atlantic Railroad Company, and Mr. George Hoadley, Jr., for the Cincinnati, New Orleans and Texas Pacific Railway Company.

November Term, 1893.

TUESDAY, *May 29th*, 1894.

(*Extract from Minutes.*)

THE INTERSTATE COMMERCE COMMISSION
v.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company.

Appeal from the Circuit Court of the United States for the Northern District of Georgia.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Georgia, and was argued by counsel.

532 On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court of the United States for the northern district of Georgia, rendered in this cause on the fifth day of June, 1893, be annulled, avoided, and reversed, and that this cause be remanded to the said circuit court with instructions to enter a decree in favor of the complainant, The Interstate Commerce Commission, and against the defendants, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company, commanding and restraining the said defendants, their officers, servants, and attorneys, to cease and desist from making any greater charge in the aggregate on buggies, carriages, and on other freight of the first class carried in less than car-loads from Cincinnati to Social Circle than they charge on such freight from Cincinnati to Augusta; that they so desist and refrain within five days after the entry of the decree, and in case they or any of them shall fail to obey said order condemning the said defendants and each of them to pay one hundred dollars a day for every day thereafter they shall so fail, and denying the relief prayed for in relation to charges on like freight from Cincinnati to Atlanta. It is further adjudged and decreed that the appellees, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company, be condemned *in solido* to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

533 *Assignment of Errors.*

(Filed June 7, 1894.)

In the United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1893.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC Railway Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, said Two Last-named Companies Being Sued by the Name of The Georgia Railroad Company, Defendants. } No. 178.

On the seventh day of June, in the year of our Lord eighteen hundred and ninety-four, in the city of New Orleans and State of Louisiana, came the said Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia (the two last-named companies being sued by the name of The Georgia Railroad Company), by Ed. Baxter, their solicitor, and say that in the
534 decree rendered by said circuit court of appeals in the above-entitled cause on the 29th day of May, 1894, and in the record and proceedings in said cause in said court, there is manifest error in this, to wit:

I.

That said circuit court of appeals erred in annulling, avoiding, and reversing the decree rendered in the above-entitled cause on June 5th, 1893, by the circuit court of the United States for the northern district of Georgia.

II.

That said circuit court of appeals erred in remanding the above-entitled cause to said circuit court for the northern district of Georgia.

III.

That said circuit court of appeals erred in instructing said circuit court for the northern district of Georgia to enter a decree in favor of complainant, The Interstate Commerce Commission, and against the defendants, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company, commanding and restraining the said defendants, their officers, servants, and attorneys, to cease and desist from making any greater charge in the aggregate on bug-

gies, carriages, and on other freight of the first class carried
535 in less than car-loads from Cincinnati to Social Circle than they charge on such freight from Cincinnati to Augusta; that they so desist within five days after the entry of the decree; and in case they or any of them shall fail to obey said order condemning said defendants and each of them to pay one hundred dollars a day for every day thereafter they shall so fail.

IV.

That said circuit court of appeals erred in decreeing that the said Cincinnati, New Orleans and Texas Pacific Railway Company, the Western and Atlantic Railroad Company, and the Georgia Railroad Company be condemned *in solido* to pay the costs of said cause in said circuit court of appeals.

V.

That said circuit court of appeals erred in not affirming said decree rendered in said cause June 5th, 1893, by said circuit court for the northern district of Georgia.

VI.

That said circuit court of appeals erred because it failed to adjudge and decree that the matters of equity alleged in the bill filed in the above-entitled cause are fully denied in the answer and are not sustained by the proof, and that said bill be dismissed.

536 VII.

Said circuit court of appeals erred because it in effect decided that said above-named defendants are under a common control, management, or arrangement for continuous carriage or shipment, and are engaged in the transportation of passengers and property wholly by railroad between Cincinnati, Ohio, and Social Circle, Georgia.

VIII.

That said circuit court of appeals erred because it in effect decided that the rates charged by the above-named defendants for the transportation of buggies, carriages, and other freight of the first class carried by them in less than car-loads from Cincinnati, Ohio, to Social Circle, Georgia, are unjust and unreasonable.

IX.

That said circuit court of appeals erred because it in effect decided that the transportation of buggies, carriages, and other freight of the first class carried by the above-named defendants in less than car-loads from Cincinnati, Ohio, to Social Circle, Georgia, is a like and contemporaneous service, under substantially similar circumstances and conditions with the transportation of buggies, carriages, and other freight of the first class carried by the above-named defendants in less than car-loads from Cincinnati, Ohio, to Augusta, Georgia.

537 X.

That said circuit court of appeals erred because it in effect decided that as the above-named defendants make a greater charge in the aggregate on buggies, carriages, and other freight of the first class carried by them in less than car-loads from Cincinnati, Ohio, to Social Circle, Georgia, than they make on such freight from Cincinnati, Ohio, to Augusta, Georgia, they thereby give to Augusta, Georgia, and its traffic an undue or unreasonable preference or advantage and subject Social Circle, Georgia, and its traffic to an undue or unreasonable prejudice or disadvantage.

XI.

That said circuit court of appeals erred because it in effect decided that the transportation by the above-named defendants of buggies, carriages, and other freight of the first class carried by them in less than car-loads from Cincinnati, Ohio, to Social Circle, Georgia, is transportation conducted under substantially similar circumstances and conditions for a shorter than for a longer distance over the same lines in the same direction, the shorter being included within the longer distance, as compared with the transportation by the above-named defendants of buggies, carriages, and other freight of the first class carried by them in less than car-loads from Cincinnati, Ohio, to Augusta, Georgia.

538 XII.

That said circuit court of appeals erred because it in effect decided that all of the above-named defendants join in the transportation of buggies, carriages, and other freight of the first class in less than car-loads from Cincinnati, Ohio, to Social Circle, Georgia, whereas the defendants The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, alone join in the carriage of such freight from Cincinnati, Ohio, to Atlanta, Georgia, and the defendants The Louisville and Nashville Railroad Company and The Central Railroad and Banking Company of Georgia (who are sued as the Georgia Railroad Company) alone carry such freight from Atlanta to Social Circle, Georgia.

XIII.

That said circuit court of appeals erred because it in effect decided that buggies, carriages, and other freight of the first class carried by the above-named defendants in less than car-loads from Cincinnati, Ohio, to Social Circle, Georgia, are carried over the same line as similar freights carried by the above-named defendants from Cincinnati, Ohio, to Social Circle, Georgia.

XIV.

That said circuit court of appeals erred because it in effect decided that the Interstate Commerce Commission has the power to
539 fix the rates of transportation to be charged by common carriers who are subject to the act to regulate commerce.

Wherefore the above-named defendants, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western & Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia (the two last-named companies being sued by the name of the Georgia railroad), pray that said decree of said U. S. circuit court of appeals for the fifth circuit be reversed, and that said court be ordered to enter a decree affirming the said decree rendered on the 5th day of June, 1893, in the above-entitled cause by said circuit court of the United States for the northern district of Georgia.

(Signed) ED. BAXTER,
Solicitor for the Above-named Defendants and Appellants.

Endorsed: Filed June 7th, 1894. J. M. McKee, clerk.

540 *Petition for Appeal.*

(Filed June 7, 1894.)

In the United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1893.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC Railway Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, said Two Last-named Companies Being Sued by the Name of The Georgia Railroad Company, Defendants. } No. 178.

The above-named defendants, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, The Central Railroad and Banking Company of Georgia, the two last-named companies being sued by the name of The Georgia Railroad Company, conceiving themselves aggrieved by the decree entered in this cause on the 29th day of May, 1894, do hereby appeal from said decree to the Supreme Court of the United States,
541 and they pray that their said appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) ED. BAXTER,
Solicitor for the Above-named Defendants.

New Orleans, La., June 7th, 1894.

Endorsed: Filed June 7, 1894. J. M. McKee, clerk.

Order Granting Appeal.

(Extract from minutes.)

November Term, 1893, Thursday, June 7, 1894.

542 THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, said Two Last-named Companies Being Sued by the Name of The Georgia Railroad Company, Defendants.

The above-named defendants, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, The Central Railroad and Banking Company of Georgia (the two last-named companies being sued by the name of The Georgia Railroad Company), pray an appeal from the decree rendered by this court in the above-entitled cause on May 29th, 1894, to the Supreme Court of the United States; and said defendants having filed with the clerk of this court their petition for appeal, together with an assignment of errors and an appeal bond, which bond has been duly approved, it is ordered, adjudged, and decreed by the court that said appeal be granted and allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, be sent to the Supreme Court of the United States.

543 *Appeal Bond.*

(Filed June 7, 1894.)

In the United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1893.

INTERSTATE COMMERCE COMMISSION, Appellee,
vs.
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC Railway Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, said Two Last-named Companies Being Sued by the Name of The Georgia Railroad Company, Appellants. } No. 178.

Know all men by these presents that we, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western &

Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia (said two last-named companies being sued by the name of The Georgia Railroad), as principals, and Frank Beck, of the State of Louisiana and city of New Orleans, surety, are held and firmly bound unto the above-named Interstate Commerce Commis-
544 sion in the sum of one thousand dollars ($1,000.00), to be paid to the said Interstate Commerce Commission; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated seventh day of June, in the year of our Lord eighteen hundred and ninety-four.

Whereas the above-named The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia (the two last-named companies being sued by the name of The Georgia Railroad) have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the U. S. circuit court of appeals for the fifth circuit:

Now, therefore, the condition of this obligation is such that if the above-named Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia (the two last-named companies being sued by the name of The Georgia Railroad Company) shall prosecute said appeal to effect and answer all damages and
545 costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY CO. [SEAL.]
(Signed) ED. BAXTER, *Its Solicitor and Attorney-in-fact.*
THE WESTERN AND ATLANTIC RAILROAD COMPANY, [SEAL.]
(Signed) By ED. BAXTER, *Its Solicitor and Attorney-in-fact.*
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, [SEAL.]
(Signed) By ED. BAXTER, *Its Solicitor and Attorney-in-fact.*
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA, [SEAL.]
(Signed) By ED. BAXTER, *Its Solicitor and Attorney-in-fact.*
(Signed) FRANK BECKS. [SEAL.]

Sealed and delivered and taken and acknowledged before me and approved by me this seventh day of June, eighteen hundred and ninety-four.

(Signed) DON A. PARDEE,
Circuit Judge.

Endorsed: Filed June 7, 1894. J. M. McKee, clerk.

546 United States Circuit Court of Appeals for the Fifth Circuit.

I, James M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 544 pages, numbered from 2 to 545, inclusive, contain a true copy of all the record, papers, and proceedings had and done in the case of The Interstate Commerce Commission *vs.* The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company, No. 178, November term, 1893, as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 9th day of June, A. D. 1894.

JAMES M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

547 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

To the Interstate Commerce Commission, Greeting:

You are hereby cited and admonished to be and appear at the court-room of the Supreme Court of the United States, at Washington, on the sixth day of July, eighteen hundred and ninety-four, pursuant to an appeal allowed and granted by the United States circuit court of appeals for the fifth circuit in the case of The Interstate Commerce Commission, as appellee, and The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia (the two last-named companies being sued by the name of The Georgia Railroad Company), as appellants, to show cause, if any there be, why the decree of said court of appeals rendered May 29th, 1894, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this seventh day of June, in the year of our Lord eighteen hundred and ninety-four.

DON A. PARDEE,
Circuit Judge.

This citation may be served by the marshal of the district where the appellee or its solicitor of record in the above cause may be found.

DON A. PARDEE,
Circuit Judge.

Service of copy of above acknowledged this 9th June, 1894.

N. J. HAMMOND,
Sol. for Interstate C. Com'n.

Endorsed on cover: Case No. 15,613. U. S. circuit court of appeals, fifth circuit. Term No., 729. The Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, appellants, *vs.* The Interstate Commerce Commission. Filed June 29, 1894.